

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-2083

United States Court of Appeals
FOR THE SECOND CIRCUIT

JOHN PETER GALANIS,

Petitioner-Appellant,

against

ERMEN PALLANICK, U. S. MARSHALL FOR
THE DISTRICT OF CONNECTICUT,

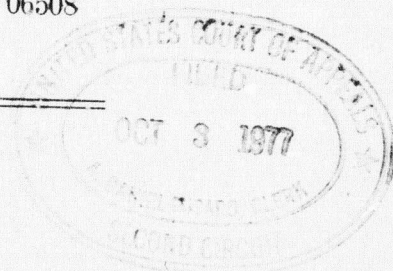
Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

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PLAINTIFFS

DEFENDANTS

UNITED STATES OF AMERICA

JOHN PETER GALANIS, a/k/a
Peter Galanis

CAUSE Extradition Treaty with the Dominion
of Canada.

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Docket Entries

DATE	NR.	PROCEEDINGS
1976		
9/1	1	Complaint filed.
"	2	Application for order authorizing presentation of complaint in extradition before Magistrate filed.
"	3	Order filed and endorsed by Newman, J. M-9/3/76.
"	4	Warrant issued by U.S. Magistrate and handed to Marshal with copy of complaint for service.
9/10		Following endorsement on Govt's memorandum of law in opposition to the allowance of bail, filed with U.S. Magistrate: 9/9/76 - There being special circumstances presented in that the hearing can not be held immediately, bail will be allowed, and defendant is on his appearance before me this date ordered to post as \$25,000.00 bond with corporate surety, to surrender his passport with travel restricted to Connecticut. The Clerk shall schedule hearing for the first available date. Latimer, M. M-9/10/76. copies mailed to U.S. Attorney and Mr. Galanis.
"	5	Appearance bond in the amount of \$25,000 (Midland Insurance Company surety) executed and filed. Latimer, U.S. Mag.
10/22	6	Order on Consent re Bail Limits, entered. Bail limits of John P. Galanis are extended to permit travel to New York, New Jersey and Pennsylvania provided that Mr. Galanis is not outside of Connecticut for more than 24 hours at time, and that he give written notice of each trip to the office of the U.S. Attorney. Latimer, U.S. Mag. M-10/22/76 Copies to U.S. Attorney and Grand & Ostrow.
11/22	7	Hearing Memorandum filed by plaintiff.
11/23		Hearing held on extradition: Court admits Mr. Grand pro hac vice provided local counsel files an appearance. Court orally vacate its order of September 1, 1976 and places the extradition hearing before this Court. Defendant moves for continuance - <u>denied</u> . Motion to Dismiss the extradition proceedings and memorandum in support of his motion to dismiss the extradition proceedings with prejudice, filed by respondent. Government Exhibit #1, filed - (Affidavit of Irene Ingalls, certification of Secretary of State and copies of Treaties). Government Exhibit #2 filed - certificate of Counsel General. Government Exhibit #3 filed - certificate of Counsel General, with attachments. Government witness, Paul Chouimard, of Quebec, Canada sworn and testified. Defendant renews motion for continuance. Court sets December 3, 1976 for the hearing of motions and December 6, 1976 for the hearing on the merits. If the motions prevail then the hearing will go off. Government moves to have defendant remanded to the custody of the U.S. Marshal - <u>denied</u> same bond to continue. Court adjourned at 3:40 P.M. Newman, J. M-11/23/76.
11/24	8	Memorandum in opposition to Motion to Dismiss filed by Gov't.
12/2	9	Court Reporter's Transcript of Proceedings held on 11/23/76, filed. (Gale, R.)
12/2	10	Motion for Order Dismissing the Instant Extradition Proceeding, filed by deft.
12/2	11	Memorandum of J. P. Galanis in Support of His Further Motions to Dismiss the Extradition Proceeding, filed.
12/2	12	Reply Memorandum of John Peter Galanis, filed.
"	13	Appearance on behalf of the defendant filed by Attorney Mark A. Weinstein of Weinstein, Shields, Schaffer, Hirsch & Lev.

Docket Entries

DATE	NR.	PROCEEDINGS
1976		
12/3		Hearing on Motions held: Defendant's exhibits 201-206 filed; Two witnesses sworn and testified on behalf of the defendant; Two Government witnesses sworn and testified; Government moves to have the Court over rule the motions - <u>denied</u> ; Court adjourned at 5:16 P.M. Newman, J. M-12/6/76.
12/6		Hearing continued: Defendant John P. Galanis' memorandum in opposition to extradition filed; Defendant's exhibits 207-213 filed; one witness sworn and testified on behalf of the defendant; Government's exhibit 4, 5 & 6 filed; One witness sworn and testified on behalf of the Government; Memorandum of John P. Galanis on the applicability of the 1911 Treaty to the Instant Proceedings filed by defendant. Defendants allowed until December 13, 1976 to submit factual brief. Same bond to continue. - <u>Decision Reserved</u> Newman, J.M-12/7/76.
12/7		Court reporter's transcript of proceedings held before Newman, J on December 3, 1976 filed. Gale, R.
12/7		Court reporter's notes of proceedings held on 12/3/76 (hearing on Motions), filed. (Gale, R.)
12/13		Court reporter's notes of proceedings held before Newman, J. on December 6, 1976 filed. Gale, R.
"		Defendant's Post-Hearing Memorandum, filed
12/13	14	Post-hearing memorandum of John Peter Galanis filed.
12/27	15	Post-hearing memorandum filed by plaintiff.
1977		
1/4		Court reporter's notes of proceedings held before Newman, J. on December 6, 1976 filed. Gale, R.
1/7	16	Post Hearing Reply Memorandum of John Peter Galanis filed.
3/8	17	Memorandum of Decision filed: ORDERED that this Certification and Order, together with a copy of all testimony heard and evidence submitted in this proceedings, be forwarded by the Clerk of this Court to the Secretary of State so that a warrant may issue upon the requisition of the proper authorities of the Government of Canada for the surrender of the defendant John Peter Galanis; and it is further ORDERED that the defendant John Peter Galanis shall continue in the custody of the United States Marshal for the District of Connecticut under the conditions of bond now in effect to await surrender pursuant to such warrant. Newman, J. M-3/8/77. One True Attest copy handed to U.S. Marshal. copies mailed to counsel of record.
3/15		Letter sent to Sec/State Washington with the following enclosures: Certified copy of Memorandum of Decision and a copy of all testimony heard and evidence submitted in case.
6/16		Court Reporter's Transcript of Proceedings of December 3, 1976, filed. Sanders, Gale & Russell, Reporters.

Docket Entries

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PLAINTIFFS

JOHN PETER GALANIS

DEFENDANTS

 ERMEN PALLIANCK, United States
 Marshal for the District of
 Connecticut

CAUSE Petition for Writ of Habeas Corpus

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Docket Entries

B

1977

3/28 1 Petition for a Writ of Habeas Corpus, filed.

" 2 Memorandum of Law in Support of Petition for a Writ of Habeas Corpus, filed.

4/5 3 Order to Show Cause for appearance at New Haven on April 26, 1977, at 10:30 A.M.; and for submission by respondent of a written memorandum in response to petition on or prior to April 20, 1977, entered. Zampano, J. H-4/1/77 Copies of Order mailed to Counsel. Attested copy of Order and copy of Petition and memorandum, handed to the Marshal for service upon U.S. Attorney.

4/12 4 Marshal's Return Showing Service, filed. - Petition, Memo & OSC

4/20 5 Response to Order to Show Cause filed, by defendant.

4/26 Hearing re Order to Show Cause. Decision Reserved on Habeas Corpus Proceeding. Zampano, J. H-4/26/77

5/3 Court reporter's Transcript of Proceedings of April 26, 1977 filed. Sanders, Gale & Russell, Reporters.

5/25 Court Reporter's Notes of Proceedings of April 26, 1977, filed. Russell, R.

6/16 6 Reply Brief of Petitioner John Peter Galanis, filed.

" 7 Ruling on Petitioner's Application for a Writ of Habeas Corpus, filed. the Petition for a writ of habeas corpus is denied. Zampano, J. H-6/16/77 Copies mailed.

" 8 Judgment entered dismissing action. Markowski, C. H-6/17/77 Copies mailed.

7/18 9 Notice of Appeal, filed by Petitioner. Copies mailed to Counsel. Copy mailed to Atty Martin with copies of Appeal forms. Copy to U.S.C.A. with copy of Docket Entries.

8/4 Civil appeals scheduling order received from Clerk, U.S. Court of Appeals, filed. H-8/4/77

17-2083

MEMORANDUM OF DECISION OF HON. JON O. NEWMAN, MARCH 8, 1977

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

JOHN PETER GALANIS,
a/k/a Peter Galanis:
:
:
:
:
:

CIVIL NO. N-76-385

MEMORANDUM OF DECISION

On February 6, 1973, a Canadian information was filed in Montreal charging defendant John Peter Galanis with defrauding Champion Savings Corp., Ltd. and its creditors of securities valued at 1,600,000 Canadian dollars. On September 1, 1976, Government counsel applied to this Court, pursuant to 18 U.S.C. § 3184, which governs the extradition of persons in the United States to foreign countries, for a warrant requiring the defendant, an American citizen residing in Connecticut, to be brought before the Court for a hearing. Section 3184 requires that a hearing be held on the Government's application, and that if the Court finds probable cause to sustain the charge,^{1/} it shall certify that finding to the Secretary of State, who then takes the appropriate steps, according to the governing treaty or convention, to secure the extradition upon the request of the demanding government.

Memorandum of Decision of Hon. Jon O. Newman, March 8, 1977

On November 23, 1976, the Court commenced the hearing required by § 3184.^{2/} After an adjournment prompted by defense counsel's request for additional time, the hearing was resumed on December 3, 1976. Initially, the Court heard testimony relating to motions filed by the defendant. The motions all seek the same relief -- dismissal of the extradition proceeding with prejudice. The defendant argues for dismissal on the following grounds: (1) that the proceeding violates a prior agreement between the defendant and the United States Attorney's Office in the Southern District of New York, (2) that the proceeding is barred by the double jeopardy clause because the defendant has already been "proceeded against" in this country on the charge for which extradition is sought, and (3) that the United States and Canada have violated defendant's Sixth Amendment right to a speedy trial. On the merits of the issue of probable cause, the defendant contends that the exhibits offered in support of the extradition request have not been properly authenticated and without these exhibits, evidence of probable cause is lacking.

The hearing lasted more than two days, during which testimony was taken from, among others, the Canadian official who directed that country's investigation of Galanis and

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Champion Savings, two Canadian lawyers qualified as expert witnesses on Canadian criminal procedure, and the two American lawyers who were principally responsible for the American securities fraud investigations that involved the defendant. Extensive briefs have been filed.

Before turning to the basic task required by § 3184 -- the determination of probable cause -- the Court will rule on defendant's motions seriatim.

I. Alleged Violation of Plea Agreement

Defendant's first claim is that the extradition proceeding must be dismissed because it violates a prior agreement between himself and the United States Attorney's Office in the Southern District of New York. The argument's legal rationale is based on the Supreme Court's decision in Santobello v. New York, 404 U.S. 257 (1971), in which the Court vacated a petitioner's state court conviction, which had been entered upon his guilty plea, because a prosecutor's promise to refrain from a sentence recommendation had been broken.^{3/}

In Santobello, the Court stated:

. . . the adjudicative element inherent in accepting a plea of guilty must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any

significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

Id. at 262. A court reviewing a claim of a violated plea agreement must determine the precise terms of the bargain, assess the claim of breach, and, if the inquiry indicates that the promise has been broken, fashion the proper remedy. The task, as Santobello states, is to determine "what is reasonably due in the circumstances." See, e.g., United States v. Alessi, 544 F.2d 1139 (2d Cir. 1976); United States v. Alessi, 536 F.2d 978 (2d Cir. 1976); United States v. Papa, 533 F.2d 815 (2d Cir. 1976); Geisser v. United States, 513 F.2d 862 (5th Cir. 1975).

A. The Agreement

One uncontroverted fact emerging from the record of this case is that the defendant has been an unusually cooperative Government informant and witness. The Assistant United States Attorney in charge of the securities investigations involving the defendant described his cooperation as "overwhelming." As a direct result of his assistance, the United States Attorney's Office for the Southern District of New York developed nearly twenty different investigations, and obtained numerous indictments, convictions, and additional

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informants. When the defendant was sentenced, Assistant United States Attorney Brodsky described the information furnished by the defendant as "completely candid and honest," and represented to the Court that Galanis had persisted in his cooperation despite at least two verified threats to his and his family's safety.

The critical issue this Court must determine is what the defendant was promised in return for his cooperation. The record developed during the hearing provides abundant evidence, not all of which is clear.^{4/} The evidence comes from three principal sources -- Brodsky's testimony, defense counsel's representations to the Court, and contemporaneous written documents purporting to set forth the agreement.

The issue was initially joined over a rather narrow dispute -- whether the extradition proceeding violated a plea bargain between Galanis and the United States that barred "the use of any information supplied to the United States by Mr. Galanis."^{5/} This statement of the agreement is repeated throughout defendant's submissions to this Court.^{6/} And this view of the agreement as barring only use of Galanis' information has been expressed by the Government throughout this proceeding.

After the hearing, however, defense counsel's

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position changed. In his post-hearing memorandum, defendant abandons his earlier position, and instead pleads in the alternative. Specifically, the defendant now argues that, in return for his cooperation, the Government agreed not to participate in any extradition proceeding based on charges involving transactions the defendant disclosed to the Government. Alternatively, the defendant argues that if the agreement was only not to disclose information received from Galanis, then the Government has not proved that the evidence on which the Canadian charge is based is wholly independent from the immunized information.

This shift in position is troublesome. Although no lawyer should be reluctant to advance additional arguments on behalf of his client, defense counsel's role in the context of this case is not simply that of an advocate. Attorney Grand, acting on behalf of the defendant, was an active participant in the negotiations that led to the agreement between the United States and the defendant. Despite the defendant's post-hearing claim that the agreement prevents Government participation in the extradition proceeding, the fact remains that the only sworn testimony before the Court that purports to state the defendant's own view of the plea bargain at the time it was made is contained in Attorney

Grand's affidavit, which clearly indicates that the defendant bargained only for a Government promise that no information he disclosed to the Government would be used against him in any subsequent proceeding to which the United States was a party.

The only evidence in the record that gives any support to the defendant's belated claim that the agreement precludes Government participation in an extradition proceeding is found in the testimony of Assistant United States Attorney Brodsky before this Court. Brodsky testified that Galanis agreed to cooperate completely with agencies of the United States concerning his activities, and that he agreed to plead guilty to two felony indictments, which would expose him to maximum penalties of a ten-year prison sentence and \$20,000 in fines. In return for his guilty pleas and his cooperation, the defendant was given what Brodsky now characterizes as "complete transactional immunity for all of the offenses which he gave us information about." (Tr. 36. Unless otherwise indicated, transcript citations refer to the hearing of December 3, 1976.)

Defendant concedes that the actual agreement as made prior to his guilty pleas contained no provision for protection from extradition or foreign prosecution.^{7/}

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Evidently neither subject was discussed (Tr. 37-39). The guilty pleas were entered separately, one in 1972, the other in early 1973. The defendant was sentenced for both crimes on February 2, 1973. He served six months of a five-year prison sentence, and is now on probation.

Four days after Galanis' sentencing, the Canadian information was filed, and shortly thereafter the Canadian authorities made their intention to extradite Galanis known to the United States. The defendant does not dispute that the first conversation between Government counsel and his attorneys concerning extradition took place only after this intention had become known -- approximately a year and a half after his plea bargain was struck, and clearly after he had pleaded guilty. At the hearing, Brodsky recalled the conversation, in response to questioning by the Court. He stated that Galanis' attorneys asked him whether he believed the plea agreement should be modified to cover United States involvement in an extradition request. Brodsky testified that he responded, "I don't think you need anything more on this agreement to cover you. I think you're covered." (Tr. 41).

Brodsky also indicated that, even though extradition had never been discussed when Galanis' plea bargain was negotiated, he nevertheless felt, at the time of defense

counsel's inquiry after the pleas, that the agreement had provided some protection for the defendant from an extradition proceeding (Tr. 42). In explaining to this Court what he felt that protection was, Brodsky totally confused use immunity, which clearly was granted, with transactional immunity, which defendant now claims he received even as to extradition proceedings. Brodsky testified, ". . . my understanding is that we have given him complete transactional immunity, that means we can't use the fruits of what -- use either his testimony or the fruits of his testimony against him in a proceeding in which the U.S. government is a party." Id.

It is unclear whether Brodsky meant that the bargain prohibited any United States participation in an extradition proceeding, as defendant now claims, or whether he meant only that the non-disclosure agreement included a prohibition against use of immunized information for the purposes of an extradition proceeding. The testimony can also be interpreted as the expression of Brodsky's opinion that the bargain in effect, though not in terms, precluded Government participation in extradition because he did not think it would be possible for the Government to participate without disclosing immunized information.

Since the precise import of Brodsky's testimony is

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ambiguous, it must be viewed in light of the contemporaneous written documents he prepared setting forth the agreement. The first of these documents is a letter from United States Attorney Whitney North Seymour, Jr. to John Keeney, Chief of the Frauds Unit at the Department of Justice. The letter is dated April 26, 1973, and was therefore written approximately two months after the defendant was sentenced. The letter, which was prepared by Brodsky, states that Galanis had been given informal immunity, and that he was expected to testify as a Government witness in an upcoming trial, United States v. Zane, 73 Cr. 192 (S.D.N.Y. 1973), scheduled to begin on May 7, 1973. The letter contains the following paragraph:

Our request to you is three-fold: first, to undertake to represent to the Canadian authorities the detriment to our pending and on-going prosecutions. . . . if Galanis is prosecuted further in Canada at this time; second, if the Canadian authorities believe that Galanis should be prosecuted now, that he should be considered to have been given immunity by our government by reason of his statements to us after the arrangement was entered into; and finally, if the Canadian authorities still insist, that we undertake to allow Galanis sufficient time in the United States to complete all of his testimony in prosecutions by this office.

If Brodsky had struck a bargain with the defendant that included protection from United States participation in extradition, this is indeed a strange paragraph. Although

the letter communicates the United States Attorney's opposition to the prompt extradition of the defendant, it is devoid of any indication that Brodsky thought the United States could not extradite Galanis because to do so would violate a plea agreement. The letter specifically contemplates extradition, albeit at some later, more convenient, date.

Brodsky's testimony in this Court reveals his state of mind at the time he wrote the letter. He testified that "I was extremely concerned by the fact that, at what was expected to be, and turned out to be, a major and long trial, Galanis was suddenly going to be either snatched away from the government and put -- extradition proceeding was going to be commenced, or he was not going to be an effective witness because he was going to have the threat of these proceedings hanging over his head. . . ." (Tr. 30).

Given his apparent concern over the extradition request, Brodsky would almost certainly have advanced the plea agreement as a bar to United States participation in the extradition proceeding if he actually believed at that time that non-participation was one of the terms of the bargain. The natural inference from the letter and from his testimony is that he did not believe the plea bargain would prevent United States participation in Galanis' extradition.

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A second document, drafted one month later, confirms this conclusion. In the course of Galanis' testimony as a Government witness in 3 States v. Zane, supra, District Judge Wyatt instructed Brodsky to prepare a written statement of Galanis' plea agreement, which would then be turned over to defense counsel in that trial for the purposes of cross-examination. The statement reads:

At a meeting on this date among Paul Grand, Galanis, and the undersigned, the following previous oral understandings were reduced to writing:

- 1) Galanis' agreement as of July 1971 re: Pleading to 2 felony indictments covered all subject matters which he has disclosed to the SEC and the U.S. Attorney.
- 2) He has effectively been given informal immunity on all such subject matters, including the matter of his involvement with Champion S & L in 1971 in Canada.
- 3) If the Court allows questioning on the Canadian involvement in the U.S. v. Zane, et al. proceeding, the Government will represent to the Court that it will not allow any such questions and answers or any information previously furnished to the Government to be used against Galanis in any extradition proceeding, or otherwise, to which the Government of the United States is a party.

The statement is initialed by Brodsky.

This document was apparently prepared with the knowledge of the defendant and his attorney, and was submitted

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to a United States District Court as an accurate statement of the plea agreement. By its terms, the statement does not bar Government involvement in an extradition proceeding; instead it specifically contemplates United States participation in an extradition proceeding, and only promises non-disclosure of information in such a proceeding, in effect, use immunity as to extradition proceedings. The defendant has never disputed this document's accuracy or completeness, and in fact, submitted a copy of the statement in support of his motion to dismiss.

Based on these two documents, Brodsky's testimony, and the defendant's representations, it is clear that the consideration the defendant bargained for and received in exchange for his guilty pleas and cooperation was immunity from United States prosecution for crimes concerning any matters he discussed with the American authorities, and a Government promise to insure that any information thus obtained would not be used against him in any proceeding, including extradition, to which the United States would be a party. In other words, as to extradition, Galanis received use immunity only. The evidence shows this and no more. Moreover, even if the record were less certain than it is, a court should not lightly infer that an Assistant United

States Attorney would undertake to waive on behalf of the United States the obligations imposed by an international treaty. Had the prosecutor purported to forego United States participation in an extradition proceeding, specification of such an extraordinary agreement would surely have been confirmed in writing; indeed, defendant's experienced counsel would have insisted on proper documentation.

B. The Claim of Breach

The question remains whether the agreement protecting defendant from disclosure of his immunized information and testimony in connection with extradition has been violated. Defendant contends that it has. He argues that information obtained from him was given to the Canadians. The Government disputes that contention.

Since the defendant was given use immunity, he contends that the Government must shoulder the burden of proving that the evidence relied upon by the Canadians in this proceeding is derived from sources wholly independent of the immunized information and testimony. Kastigar v. United States, 406 U.S. 441, 460 (1971); Murphy v. Waterfront Comm'n, 378 U.S. 52, 79 (1964).

In an attempt to discharge this burden, the Government relies on the testimony of three witnesses at the hearing.

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The first witness, Brodsky, testified that he never spoke to any Canadian investigators about the information he learned from Galanis (Tr. 33). A second witness, Lester Green, special counsel to the SEC, was assigned to investigate matters involving Galanis in August, 1970. Of all the American investigators, Green appears to be the only official who has been continuously involved with Galanis from the outset of the American investigation of him through his long period of cooperation. Green testified that the SEC was contacted twice by Canadian investigators interested in Galanis. On both occasions, virtually no assistance was given, and neither contact is a basis for finding a breach of the plea bargain.

Green stated that in 1972 "some people from Canada" came to the offices of the SEC in Washington to discuss an investigation unrelated to Galanis. While there, they asked Green's superior whether the SEC was familiar with the activities of John Peter Galanis. Green testified that he immediately understood the problem that would occur if the SEC assisted the Canadians. He stated, "I told my superior that I felt it would be ethically improper for me to get involved," and that the "only assistance I provided them was I called down to the file room and asked for public documents

Memorandum of Decision of Hon. Jon O. Newman, March 8, 1977

. . . to be brought up and put them in a room and I left them, and I did not divulge anything that Mr. Galanis had told me or furnish any documents which Mr. Galanis had given me." (Tr. 110).

The second Canadian request to the SEC occurred in December, 1973. Green testified that at that time he received a call from Jacob Graber of the SEC New York office. Graber explained that two Canadian officials had come to New York and were seeking information concerning Galanis and Champion Savings. Graber knew that Green had been involved in the Galanis investigations, and wanted to know "if I was in a position to furnish any information for the Canadians." (Tr. 115). Green stated that he discouraged Graber, and told him that neither he nor anyone at the Department of Justice who had worked with Galanis during the period of his cooperation could provide the Canadians any assistance.

Green's testimony is corroborated by the testimony of George Prenovost, Director General of the Inspection Service of the Department of Consumers, Cooperatives and Financial Institutions of the Province of Quebec. Prenovost directed the Canadian investigation of Galanis, which he described as being virtually complete by December, 1973 (Tr. 54). That month, however, he sent two investigators to New

York City to request assistance from the SEC in connection with some recent leads they had developed. They met with Graber, who obtained for them, through the help of a New York City stockbroker, a statement from a trust company, some daily stock quotations, and some serial numbers from several stock certificates. None of this information came from Galanis.

Prenovost testified that his investigators returned to Montreal with that information, expecting to receive at some later date additional information from Graber. After several months had passed, the Canadian official contacted Graber in New York, who explained to him that "there was some agreement, and that he was not able to deliver what he had promised." (Tr. 87). According to Prenovost after that conversation, no further requests for information were made to the United States. When asked whether any of the documents submitted to the United States in support of the extradition request had been obtained "in any way" through the United States or any of its agents or agencies, Prenovost replied convincingly in the negative.

Defendant contends that, in accordance with the standards of Kastigar, evidence cannot be presented against a person who has testified under a grant of what amounts to use immunity unless the offerer of the evidence not only

Memorandum of Decision of Hon. Jon O. Newman, March 8, 1977

demonstrates that immunized testimony is not being used, but also demonstrates that the evidence presented was obtained from sources independent of the immunized testimony. This latter requirement assures that the immunized testimony was not used even indirectly as a lead to other evidence.

No case appears to have considered whether the Kastigar standards applicable when a domestic prosecution (federal or state) is brought against a witness given use immunity apply with equal rigor in the extradition context. See Zicarelli v. New Jersey State Commission on Investigation, 406 U.S. 472 (1972), specifically leaving open the somewhat analogous question of whether a witness given use immunity can still assert the privilege against self-incrimination because of a realistic fear of foreign prosecution. See also In re Cardassi, 351 F. Supp. 1080 (D. Conn. 1972).

There are policy reasons for a slightly less exacting procedure. The demanding country, having negotiated a treaty, understandably expects its treaty rights to be recognized, without any dilution based on use immunity agreements to which it is not a party. And the demanding country can in some circumstances be substantially burdened by having to demonstrate to the extraditing magistrate that an inde-

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pendent source exists for all evidence presented in support of extradition. Thus, it may be that when the United States has given a witness use immunity that extends to extradition proceedings, the United States fulfills its obligation simply by negating by clear and convincing evidence that any immunized testimony of the witness has been transmitted to the demanding country. Taken together the testimony of Prenovost, Green, and Brodsky abundantly demonstrates that no information disclosed by Galanis was relayed to Canadian authorities.

Even if a use immunity agreement in the context of extradition requires proof of an independent source for the evidence presented to obtain extradition, that standard has been met here. The bulk of the evidence presented by the Canadian authorities, sufficient to establish probable cause, see Part VI, infra, comes from deposition testimony of Theodor Arnold and corporate and banking records available wholly independently of Galanis' testimony. The Government has established that the presentation of evidence in this extradition proceeding does not violate the use immunity agreement with Galanis.

For the foregoing reasons, defendant's motion to dismiss this proceeding, on the ground that the extradition

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proceeding violates a prior agreement between him and the United States, is denied.

II. Applicability of 1971 Treaty

Before turning to defendant's other motions, at least one of which turns on rights he claims under a United States-Canada treaty, it is important first to determine which international agreement governs Galanis' extradition. On December 3, 1971, at Washington, D.C., representatives of the United States and Canada signed a Treaty on Extradition Between the United States of America and Canada. This treaty went into effect on March 22, 1976. Article 18 of the treaty provides:

(2) This Treaty shall terminate and replace any extradition agreements and provisions on extradition in any other agreement in force between the United States and Canada; except that the crimes listed in such agreements and committed prior to entry into force of this Treaty shall be subject to extradition pursuant to the provisions of such agreements. [emphasis added].

T.I.A.S. No. 8237. There is no dispute that the crime with which Galanis is charged was allegedly committed prior to the entry into force of the 1971 Treaty. Thus by the very terms of the treaty this proceeding is governed by the previous extradition treaty in force, Article 10 of the Webster-

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Ashburton Treaty of 1842, 26 Stat. 1508, as supplemented by the Extradition Conventions of 1889, 1900 and 1951.

Galanis argues that notwithstanding this express provision, the 1971 Treaty governs his extradition. He offers several possible alternative constructions of Article 18 of the Treaty, but none of these detracts from the plain meaning of the words the treaty uses. The general principles Galanis cites -- that extradition treaties are generally considered to be retroactive, and that if a treaty fairly admits of two constructions, the more lenient one is preferred -- hardly carry any persuasive force here, where the treaty provision is unambiguous and on its face controverts any inference of retroactivity.

The plain meaning of the treaty's words to preclude retroactivity is supported by two persuasive considerations. The first is the letter of submittal of the treaty to the President from Robert S. Ingersoll, Acting Secretary of State. That letter states: "The Treaty is not retroactive in effect." See Message from the President of the United States Transmitting the Treaty on Extradition Between the United States of America and Canada, 93d Cong., 2d Sess. (1974), at p. vi. The second is an affidavit submitted in this case by K.E. Malmborg, Assistant Legal Adviser for Management in the

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Office of the Legal Adviser, Department of State. He asserts that "all of the provisions on extradition in other agreements in force prior to the 1971 treaty, and not the provisions of the 1971 treaty, apply to crimes listed in such other agreements which were committed prior to March 22, 1976." While such an affidavit is not necessarily determinative, this one accords with the plain language used in the treaty and the statement in the Ingersoll letter of transmittal. Cf. Greci v. Birknes, 527 F.2d 956 (1st Cir. 1976).

Finally, although the bulk of the activity in this proceeding has occurred after the effective date of the treaty, the Canadian extradition demand was in fact made on December 10, 1974, well before the effective date of the treaty.

III. Speedy Trial

The Canadian information and the warrant for the arrest of Galanis were filed in February of 1973, but the instant proceeding did not commence until September of 1976. Galanis argues that the delay of three and one-half years between the information and the formal commencement of the extradition proceeding was due to collusion between the United States and Canada to postpone his extradition until

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the end of his usefulness to the United States in testifying against other defendants in stock fraud cases here. Galanis claims that the delay has prejudiced him and has violated his constitutional right to a speedy trial.

An extradition proceeding is not a criminal prosecution, and the constitutional safeguards that accompany a criminal trial in this country do not shield an accused from extradition pursuant to a valid treaty. Neely v. Henkel, 180 U.S. 109 (1901); Ex parte La Mantia, 206 F. 330 (S.D.N.Y. 1913). As Judge Smith stated in Gallina v. Fraser, 177 F. Supp. 856, 866 (D. Conn. 1959), aff'd, 278 F.2d 77 (2d Cir. 1960), cert. denied, 365 U.S. 851 (1960):

Regardless of what constitutional protections are given to persons held for trial in the courts of the United States or of the constituent states thereof, those protections cannot be claimed by an accused whose trial and conviction have been held or are to be held under the laws of another nation, acting according to its traditional processes and within the scope of its authority and jurisdiction.

The fact that the United States "participates" in the arguable denial of a constitutional protection by surrendering the defendant to the demanding nation does not implicate the United States in an unconstitutional action. Holmes v. Laird, 459 F.2d 1211 (D.C. Cir. 1972), cert. denied, 409 U.S. 869 (1972).^{8/}

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What we learn from Neely is that a surrender of an American citizen required by treaty for purposes of a foreign criminal proceeding is unimpaired by an absence in the foreign judicial system of safeguards in all respects equivalent to those constitutionally enjoined upon American trials.

Id. at 1219. The Second Circuit has recently stated that "the Sixth Amendment's guarantee to a speedy trial, limited by its terms to criminal prosecutions, is inapplicable to international extradition proceedings." Jhirad v. Ferrandina, 536 F.2d 478, 485 n.9 (2d Cir. 1976).^{9/}

Galanis asserts that the United States "participated" in the denial of his right to a speedy trial not merely by initiating this extradition hearing, but also by deliberately combining with Canada to delay extradition until his usefulness as a cooperative witness in United States prosecutions had come to an end.^{10/} This is a more active involvement than surrender alone, and it is possible that in a proper case United States complicity in deliberate action to deny a constitutional right would warrant the relief defendant requests.^{11/} Under the circumstances of the present case, however, there has been no denial of defendant's Sixth Amendment right to speedy trial even under standards that would govern an American court in a domestic prosecution, because defendant has shown no prejudice. Barker v. Wingo, 407 U.S.

514 (1972). The only prejudice defendant cites is the unavailability of a defense witness. However, the affidavit of defendant's counsel reveals that efforts to locate that witness began in 1973, only a few months after the date of the Canadian information. Even if the United States had proceeded promptly in extraditing Galanis, this witness would have been unavailable. His continued absence in 1976 does not establish prejudice.

IV. Double Jeopardy

Defendant contends that his guilty pleas to two specific crimes were intended, according to his plea bargain, to be in satisfaction of all crimes he disclosed to the American authorities. Evidently during the course of his cooperation he gave investigators information concerning his Canadian activities. On this basis, defendant now contends that the double jeopardy clause bars his extradition. He also claims a treaty right to protection from extradition based on the 1971 treaty,^{12/} but as has been previously discussed, the Webster-Ashburton Treaty rather than the 1971 treaty governs his extradition.

Neither the Constitution nor the Webster-Ashburton Treaty confers on Galanis the right he claims.

There is no constitutional right to be free

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from double jeopardy resulting from extradition to the demanding country.

* * *

The Fifth Amendment right not "to be twice put in jeopardy of life or limb" is available only to prosecutions in this country. The essential elements of a plea of double jeopardy are identity of successive sovereigns and an identity of alleged offenses. (citations omitted).

In re Ryan, 360 F. Supp. 270, 275 (E.D.N.Y. 1973), aff'd, 478 F.2d 1397 (2d Cir. 1973). This Circuit has held that the Webster-Ashburton Treaty cannot be read to provide protection from extradition even where double jeopardy would have been applicable had the prosecution occurred in the United States. United States ex rel. Bloomfield v. Gengler, 507 F.2d 925 (2d Cir. 1974).

"A sovereign nation," the Supreme Court declares, "has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction." "The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself." And "[a]ll exception . . . to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source."

Holmes v. Laird, 459 F.2d 1211, 1216 (D.C. Cir. 1972), cert. denied, 409 U.S. 869 (1972). (citations omitted).

V. Admissibility of Evidence

The admissibility of evidence in an extradition hearing is governed by 18 U.S.C. § 3190, which provides:

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

The evidence offered against Galanis is basically in two parts. The first (Govt. Exhibit 2) consists of the statements of Theodor Arnold made in Zurich, Switzerland, before a Zurich police officer and a Canadian securities enforcement official, and the second (Govt. Exhibit 3) consists of depositions, and accompanying exhibits, taken in Canada in connection with the investigation of the matter of Champion Savings Corp., Ltd. Galanis objects to the admissibility of all these documents on the ground that they do not conform to the authentication requirement of § 3190.

Galanis apparently does not dispute that the

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certificates of the consular officials affixed to Exhibits 2 and 3 are in proper form. He argues that though these certificates establish a prima facie case of authentication "so as to entitle [the evidence] to be received for similar purposes by the tribunals of the foreign country," he can prove that the documents are in fact insufficiently authenticated for introduction into evidence in Canadian tribunals. At the extradition hearing he was permitted to introduce the testimony of an expert in Canadian law, who stated that the Government's exhibits would not be admissible in Canada, either at a preliminary hearing on probable cause or at an extradition hearing.^{13/} To counter this evidence the Government offered the testimony of its own expert, who concluded that the Arnold declaration (Govt. Exhibit 2) would have been admissible at a Canadian extradition hearing.

Upon full consideration of the law, it is my opinion that all the testimony relating to the admissibility or inadmissibility of Exhibits 2 and 3 at a hearing for similar purposes in Canada was improperly received and should be stricken. Where the certificate of the principal diplomatic or consular officer is in proper form, no inquiry is permitted into whether the rules of evidence of the demanding state would allow the admission of the evidence.

The statute comprehends two concepts, certification and authentication. Certification is the act performed by the United States officer, attesting that authentication is proper.^{14/} Authentication is entirely separate. If a document is "properly and legally authenticated" so as to entitle it to be "received for similar purposes by the tribunals of the foreign country," then it is admissible in this proceeding under § 3190. The phrase "for similar purposes" has been interpreted to mean "for the purposes of a hearing on criminality" rather than an extradition hearing. In re Lincoln, 228 F.2d 70 (E.D.N.Y. 1915), aff'd, 241 U.S. 651 (1915); In re McPhun, 30 F. 57 (S.D.N.Y. 1887); In re Fowler, 4 F. 303 (S.D.N.Y. 1880).

The present issue is whether the language of the statute providing that the consular certificate shall be "proof" of proper authentication means conclusive proof, or merely prima facie proof which the defendant may rebut by calling experts in the law of evidence of the demanding state to testify that the documents are not properly authenticated.^{15/} Defendant cites no case where evidence has been received to rebut a proper certification of authenticity, nor has this Court found one. What case law there is has generally concerned a defendant's attempt to prove that the certified

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evidence would not be admissible at common law or under the law of the state in which the extradition proceeding takes place and therefore would be insufficient to meet the requirements of the pertinent treaty. See, e.g., Elias v. Ramirez, 215 U.S. 398 (1910); United States v. Artukovic, 170 F. Supp. 383 (S.D. Cal. 1959).

The language of several cases from the era shortly after the enactment of what is now § 3190^{16/} indicates a belief that Congress intended consular certification to provide absolute proof of underlying authenticity:

It seems to me that the amending act [now codified in § 3190] was clearly designed to prescribe a single test of admissibility of evidence in proceedings in this country . . . In other words, the amending statute intended to make the consular certificate the final and controlling guide in determining the admissibility of testimony before the extradition commissioner. [emphasis added].

Ex parte Schorer, 197 F. 67 (E.D. Wis. 1912).

Under [§ 3190], the prosecution may rely upon the certification of the diplomatic or consular officer, which, if in conformity with the statute, is of itself absolute proof that the papers so certified are receivable in the foreign country in proof of criminality.

* * *

The evident meaning of [§ 3190] is that whatever papers are so authenticated as to be receivable in evidence in the foreign country as proof of the criminality of the

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accused may be received in evidence here; and that our consul's certificate that they are so authenticated as to be entitled to be used for that purpose there shall be conclusive proof on that point.

In re McPhun, 30 F. 57 (S.D.N.Y. 1887). Two other cases, In re Behrendt, 22 F. 699, 700 (S.D.N.Y. 1884), and In re Fowler, supra at 311, state that the certification of the diplomatic official is absolute if in proper form, whatever may be the tenor of underlying authentication of the foreign officials. Behrendt states that correct certification remedies any defects in the previous authentication.

The matter would be entirely free from doubt were it not for arguably conflicting statements in the Second Circuit's decision in Shapiro v. Ferrandina, 478 F.2d 394 (2d Cir. 1973). In that case defendant challenged the sufficiency of the certification of documents presented to the extraditing magistrate. The certificates authenticated only provisions of foreign law and certain charging documents, but not other documents submitted as evidence of probable cause. Judge Friendly began consideration of defendant's objection with the unqualified observation that the certification specified in § 3190 is "conclusive," id. at 903, citing 6 Whiteman, Digest of International Law 969-70 (1968), and 1 Moore, Extradition 499-501 (1891). Then, turning to the

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apparently limited coverage of the certification, Judge Friendly inferred from circumstances in the record that the certifying ambassador had intended to certify the evidence documents, as well as the charging documents. 478 F.2d at 904. Concluding the discussion, he expressed the court's unwillingness to release the defendant "in the absence of any showing that the [evidence] documents were not authentic or not of the sort admissible in [the demanding country] for purposes of establishing the sufficiency of the evidence."

Ibid. It is this last thought that defendant seizes upon as indicating that he should have an opportunity to present evidence to show that the documents certified as authentic in this case are in fact not authentic, i.e., that they would not be admissible to establish probable cause in a Canadian court.

Even if the dictum in Shapiro contemplates receiving defendant's evidence to negate authenticity in some circumstances, it offers no basis for doing so to rebut a proper certificate that embraces evidence of probable cause. At most Shapiro invites evidence when a serious question exists as to whether the critical evidence of probable cause has been certified at all. In such circumstances authenticity remains an issue, and defendant's evidence on that subject

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may well be appropriate. But where, as here, the certificate is complete, Shapiro itself states that the certificate is conclusive.

To give conclusive effect to the diplomatic certification and preclude proof of lack of authenticity is, as Wigmore says, an extreme step. 4 Wigmore, Evidence (Chadbourn Revision) § 1348; see generally §§ 1345-52 and 2492 on conclusive preferences and presumptions. The drastic nature of applying such a rule is particularly apparent in a case such as this one, where the defendant's offer of proof is substantial. But there are policy reasons for adhering to the consistent interpretation of § 3190 that a formally correct certification of an appropriate diplomatic officer is conclusive on the issue of authentication.

Whenever any of the state or federal judicial officers authorized to conduct extradition hearings, 18 U.S.C. § 3184, has to venture into the unfamiliar realm of deciding how a foreign jurisdiction would interpret its own law, he may encounter uncertainty beyond the expected vagaries of domestic law. Here the stakes are higher than usual, for the risk of error is borne not by private litigants but by the foreign government itself. A misinterpretation of a foreign rule of law in an extradition proceeding deprives the foreign

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government of its treaty right to extradition and could have ramifications on relations between the United States and the foreign nation.

The merits of the defendant's admissibility argument will vary in each individual case, of course. If he is clearly wrong and the American court rejects his argument, the foreign government would have been put to the hardship of meeting the challenge, probably at considerable expense, despite the general rule laid down by Congress and the Supreme Court that the government may rest on its documentary evidence.^{17/} If the defendant's interpretation of foreign law has arguable merit, an erroneous decision in his favor would risk offending the foreign government that will have been denied its lawful treaty right. But if the defendant is right that the evidence against him would be inadmissible in the courts of the foreign country, the consequence of a decision against him is only that he will have to present his defense to the foreign courts, which ex hypothesis will agree with his view of the law, or face trial on other admissible evidence that was not used to obtain extradition. The possibility of serious international repercussions from improperly releasing the defendant sufficiently outweighs the consequence

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of sending him to the foreign country present a defense based on foreign law.

Further, Galanis cannot claim that the documents offered are inherently untrustworthy, for it has frequently been held that even unsworn statements are admissible when properly certified. Elias v. Ramirez, 215 U.S. 398 (1910); Ex parte Glaser, 176 F.2d 702 (2d Cir. 1910). His only attack is on the fact that the Canadian officials who authenticated the documents hold positions other than those specified in the Canadian Criminal Code for persons qualified to take deposition evidence. This is an argument that "savors of technicality." Bingham v. Bradley, supra, 241 U.S. at 517; Shapiro v. Ferrandina, supra, 478 F.2d at 904.

[I]f the certificates, signatures, etc. are in substantial conformity to the requirements of the statute, and give reasonable assurance of authenticity, it is sufficient.

In re Neely, 103 F. 626 (S.D.N.Y. 1900), aff'd sub nom. Neely v. Henkel, 180 U.S. 101, 126 (1901). See also Grin v. Shine, 187 U.S. 181 (1902). If evidence were ever to be admitted to rebut a consular official's certification of authenticity, the issue as to authenticity would have to involve some claim affecting the integrity of the proffered documentation.

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VI. Probable Cause

Galanis is charged with the crime of fraud in violation of § 338 of the Canadian Criminal Code, which provides for imprisonment of up to ten years for "[e]very one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security." The Canadian information charges that Galanis, by deceit, falsehood or other fraudulent means, defrauded Champion Savings Corporation Ltd. and its creditors of securities valued at Can. \$1,600,000.00 or of the proceeds from the sale or transfer of such securities in that amount.

There is ample evidence to support a finding of probable cause that Galanis committed the crime of fraud in violation of § 338. Without elaboration of all the details of the fraudulent scheme, which are set forth at some length in the voluminous deposition evidence and attached documents submitted as Government Exhibits 2 and 3, the evidence shows the following:

John Peter Galanis was vice president and director of Champion Savings Corporation Ltd. (Champion) in 1971 when the offense was committed. He also indirectly controlled

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Champion through his control of Champion's major shareholder, Jason Investment Holdings, Ltd. Under his instructions the investment portfolio of Champion, which had mainly consisted of bonds, was gradually converted by November of 1971 through a series of transactions effected through Bank Widemann & Co. of Zurich, Switzerland. Champion purchased a total of Can. \$1,175,000 in Kassaobligations (bank debentures) of Bank Widemann. These Kassaobligations were sent in for redemption in November of 1971. On November 17, 1971, on instructions from Champion, the Champion account at Bank Widemann was debited in the amount of Can. \$1,600,000, which was credited to the account of an entity called BWC Trust Reg. for the purchase of Can. \$1,600,000 in BWC Trust Kassaobligations. Sixteen BWC Trust Kassaobligations were purchased in denominations of Can. \$100,000 each. On February 17, 1972, an additional Kassaobligation for Can. \$100,000 was purchased. These BWC Trust Kassaobligations formed the bulk of the Champion Savings portfolio. They were to carry 9% interest, payable semi-annually, and were to mature in five years. According to certain letters addressed to Champion on Bank Widemann stationery and bearing what appeared to be the signature of a Bank Widemann officer, Bank Widemann guaranteed

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payment on maturity of the principal amount of the Kassa-obligations.

The Bank Widemann guarantee, however, was a forgery. Further, the financial statements of Bank Widemann prepared to enable evaluation of the worth of the guarantee had been altered to remove the Swiss franc currency sign, leading the reader to believe that amounts shown were in dollars. The first semi-annual interest payment on the BWC Kassaobligations was not paid when due, and in fact no interest was ever paid. The value of the BWC Kassaobligations, representing the bulk of Champion's portfolio, declined for all practical purposes to zero. Champion went into receivership.

Meanwhile, the Can. \$1,600,000 received by BWC Trust for the purchase of the Kassaobligations had been paid out in a series of transactions to a number of persons and entities, including, among others, Woodruff & Co., which was apparently a personal holding company for John Peter Galanis, and Jason Investment Holdings, Ltd., also controlled by Galanis. Some of the amount went to Galanis in the form of traveler's checks. The evidence of Galanis' involvement in the scheme more than supports a finding of probable cause.

Galanis' final argument is that the evidence at most shows the commission of a crime in Switzerland rather

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than in Canada, which would not be an offense extraditable under the United States-Canadian treaty. This argument is without merit. Champion Savings Corporation Ltd. was a Canadian corporation with offices in Montreal. There is evidence that Galanis made business trips to Montreal on Champion matters during the period of time charged in the indictment. The misrepresentations about the Bank Widemann guarantee were made to persons in Canada. The effects of the fraud were clearly felt by investors and creditors in Canada. Under recognized principles of international law, Canada has jurisdiction to punish for this offense. Restatement, Foreign Relations Law of the United States, §§ 17, 18, 20.

A very similar issue involving extradition to Canada for the offense of obtaining money by false pretenses was decided in Ex parte Hammond, 59 F.2d 683 (9th Cir. 1932), cert. denied, 287 U.S. 640 (1932). In that case the appellant claimed that the offense, if any, was committed in the state of California and not in Canada since he did not actually "obtain" any money by false pretenses or otherwise until the money was deposited in his California bank. He also argued that he made the false pretenses at Chicago after he had left Canada and never returned there, and thus was not a fugitive from Canada. The court disposed of these arguments by citing

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Ford v. United States, 273 U.S. 593, 623 (1927), a case in which the Supreme Court had relied on James Bassett Moore, a recognized expert in international law and Judge of the Permanent Court of International Justice, for the following proposition:

The principle that a man, who outside of a country willfully puts in motion a force to take effect in it, is answerable at the place where the evil is done, is recognized in the criminal jurisprudence of all countries. And the methods which modern invention has furnished for the performance of criminal acts in that manner has [sic] made this principle one of constantly growing importance and of increasing frequency of application.

The Ford rule, as reiterated in an extradition context in Hammond, is that "[a]cts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power." 273 U.S. at 620-21; see also Strassheim v. Daily, 221 U.S. 280 (1911); Leasco Data Processing Equipment Corp. v. Maxwell, 468 F.2d 1326 (2d Cir. 1972); Schoenbaum v. Firstbrook, 405 F.2d 200 (2d Cir. 1968), modified, 405 F.2d 215, cert. denied, 395 U.S. 906 (1969); United States ex rel. Eatessami v. Marasco, 275 F. Supp. 492

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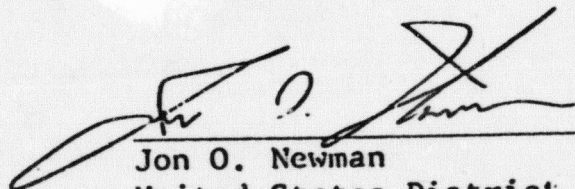
(S.D.N.Y. 1967); Re Chapman, 5 C.C.C. 46, 11 C.R.N.S. 1 sub nom. Regina v. Chapman (Ont. Ct. App. 1970).

For the foregoing reasons the Court finds that there is probable cause to believe that Galanis committed the offense as charged and that he has no valid defense to extradition. Accordingly, it is

ORDERED that this Certification and Order, together with a copy of all testimony heard and evidence submitted in this proceeding, be forwarded by the Clerk of this Court to the Secretary of State so that a warrant may issue upon the requisition of the proper authorities of the Government of Canada for the surrender of the defendant John Peter Galanis; and it is further

ORDERED that the defendant John Peter Galanis shall continue in the custody of the United States Marshal for the District of Connecticut under the conditions of bond now in effect to await surrender pursuant to such warrant.

Dated at New Haven, Connecticut, this 8 day of March, 1977.



Jon O. Newman
United States District Judge

FOOTNOTES

1/ Although the statute does not specifically indicate the burden of proof that must be met in order for the certification to be made, the legal standard has been defined as proof of probable cause. First Nat'l City Bank of New York v. Aristeguieta, 287 F.2d 219 (2d Cir. 1960), vacated on other grounds, 375 U.S. 49 (1963); In re Extradition of Gonzalez, 217 F. Supp. 717 (S.D.N.Y. 1963).

2/ At the outset of the hearing, the Government called a witness, Paul Chouinard, former vice-chairman of the Quebec Securities Commission, who positively identified the defendant as the John Peter Galanis who appeared before him in 1971 or 1972 in connection with a proceeding before the Commission involving Champion Savings Corporation. Although Chouinard was cross-examined, the defendant has never seriously disputed in this proceeding that he is the person named in the Canadian information.

3/ The Santobello holding specifically applies to prosecutorial promises that induced guilty pleas. As the testimony in this case revealed, the possibility of extradition was not part of the plea negotiations between the

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Government and the defendant. Since extradition was not discussed until after the defendant had pleaded guilty, whatever assurances he received regarding United States involvement in his extradition induced, at most, his continued cooperation. It may well be that "what is reasonably due" a defendant in the context of a cooperation bargain is different from what is due with regard solely to a plea bargain. For the purposes of deciding this case, however, I will assume Santobello applies to defendant's claims just as it would in circumstances where the disputed terms of the bargain related only to the consideration for a defendant's guilty plea.

4/ Much of this confusion could have been avoided by adherence to more orderly prosecutorial procedures. Throughout this proceeding the Government has never offered any explanation why a written statement of its agreement with Galanis was not prepared when the bargain was struck in 1971. If such a document were available, it would have significantly facilitated judicial resolution of the disputed terms of the bargain.

In the last year nearly a dozen judges in this Circuit have had to preside over what Judge Lumbard has described as a "staggering spate of litigation" arising from a similar

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dispute over the scope of a single plea bargain. See United States v. Alessi, supra; United States v. Papa, supra. I have no doubt that other courts will also have to review Galanis' claims after judgment is entered in the pending case, as the defendant continues to pursue his legal remedies. In the future, the Government would be well advised to reduce plea agreements and post-plea cooperation agreements to written form, at least in cases involving defendants with complicated criminal activities.

5/ This description of the agreement appears on the first page of the first motion defendant filed in this action. Defendant's Motion to Dismiss, November 22, 1976, at 1.

6/ See, e.g., Defendant's Motion to Dismiss, November 22, 1976, at 1; Affidavit of Paul Grand, November 22, 1976, at ¶ 1, ¶ 3(b), ¶ 4, ¶ 7; Defendant's Memorandum in Support of the Motion to Dismiss, November 22, 1976, at 1; Reply Memorandum, December 2, 1976, at 2.

7/ Defendant's Post-Hearing Memorandum at 9.

8/ The argument made in Holmes was in essence "that the turnover of an American citizen for service of a sentence

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imposed in culmination of an unfair foreign trial is a governmental involvement which the Constitution does not tolerate." 459 F.2d at 1217. The Court held that the Constitution raises no barrier to surrender of an accused in conformity with an extradition agreement even though the trial in the foreign nation did not afford defendants the protections of the Bill of Rights.

9/ Jhirad dealt with the application of the statute of limitations where the treaty gave the accused the benefit of the shorter period available in either the requesting country or the asylum country. In the absence of a treaty provision, the statute of limitations defense may not be raised in an extradition proceeding. Merino v. United States Marshal, 326 F.2d 5 (9th Cir. 1963). Thus In re Mylonas, 187 F. Supp. 716 (N.D. Ala. 1960), cited by defendant, is not in point, because the applicable treaty provided that "A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of either of the surrendering or the demanding country, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked."

Memorandum of Decision of Hon. Jon O. Newman, March 8, 1977

There is no such provision in the Webster-Ashburton Treaty, as supplemented.

10/ There is very little evidence to support this allegation. Arguably it is a reasonable inference from the evidence of Brodsky's expressed preference to his superiors that Galanis' extradition be delayed until he had testified as expected coupled with the fact that a considerable delay actually occurred.

11/ If, for example, United States agents had participated in forcibly extracting a confession from a defendant, or had ransacked his house and turned his private papers over to the demanding country, a court might refuse to extradite the accused to enforce his right to be free from unconstitutional United States action. Ironically, that sanction, tantamount to dismissal of a domestic indictment, would extend the accused even more protection than he would have in a domestic prosecution, where exclusion of the unconstitutionally obtained evidence would be the limit of relief. Since the domestic sanction for violation of the speedy trial right is dismissal of the indictment, see Barker v. Wingo, 407 U.S. 514, 522 (1972), refusal to extradite would not present the same anomaly. Since denial of extradition denies

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a foreign state its treaty rights, use of this remedy to redress unconstitutional actions of United States officials would always have to be weighed with care.

12/ Article 4 of the 1971 Treaty provides:

(1) Extradition shall not be granted in any of the following circumstances:

(i) When the person whose surrender is sought is being proceeded against, or has been tried and discharged or punished in the territory of the requested State for the offense for which his extradition is requested.

13/ Defendant also makes an admissibility argument based on Article 10(2) of the 1971 Treaty, but since that treaty is not applicable for the reasons stated above, no discussion of this point is necessary.

14/ The courts have recognized that Congress did not expect the consular official to be an expert in the law of the demanding state:

Since the Ambassador could not, of his own knowledge, know the law of Israel, he had to rely on the Israeli authorities to inform him. When they sent him the testimony at issue for extradition purposes they were informing him that he could properly certify the documents.

Shapiro v. Ferrandina, 355 F. Supp. 563 (S.D.N.Y. 1973),
aff'd, 478 F.2d 894 (2d Cir. 1973).

Memorandum of Decision of Hon. Jon O. Newman, March 8, 1977

15/ If any defect appears in the certification, the statutory mode of proof is not exclusive, and other evidence may be introduced to prove that the documents are in fact authenticated so as to entitle them to be received as evidence of criminality in the foreign country. Desmond v. Rogers, 18 F.2d 503 (9th Cir. 1927), and cases cited therein.

16/ Section 3190 derives from R.S. § 5271, Act of August 3, 1882, ch. 378, § 5, 22 Stat. 216.

17/ Bingham v. Bradley, 241 U.S. 511, 517 (1916).

RULING ON PETITIONER'S APPLICATION FOR A WRIT OF
HABEAS CORPUS OF HON. ROBERT C. ZAMPANO, JUNE 16, 1977

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JUN 19 1 11 PM '77

U.S. DISTRICT COURT
NEW HAVEN, CONN.

JOHN PETER GALANIS,

Petitioner,

v.

ERMEN J. PALLANCK, United States
Marshal for the District of
Connecticut,

Respondent.

CIVIL NO. N-77-140

JUN 20 1977

RULING ON PETITIONER'S APPLICATION FOR A
WRIT OF HABEAS CORPUS

In this habeas corpus proceeding, petitioner John Galanis challenges the validity of an order issued by Judge Jon O. Newman who, sitting as an extraditing magistrate under the provisions of 18 U.S.C. § 3184, certified to the Secretary of State that Galanis was extraditable to Canada.

I

On March 8, 1977, after hearing extensive testimony, Judge Newman ruled that the evidence before him warranted Galanis' extradition to Canada and committed him to the custody of the United States Marshal. In a well-reasoned opinion, Judge Newman held that: 1) the extradition proceeding did not violate a prior agreement between the United States and Galanis; 2) Article 10 of

Ruling on Petitioner's Application for a Writ of Habeas Corpus of Hon. Robert C. Zampano, June 16, 1977

the Webster-Ashburton Treaty of 1842, 26 Stat. 1508, as supplemented by the Extradition Conventions of 1889, 1900 and 1951, governed Galanis' extradition, rather than Article 18 of the Treaty on Extradition Between the United States and Canada, which was executed on December 3, 1971, but went into effect on March 22, 1976; 3) there has been no violation of Galanis' constitutional right to a speedy trial; 4) the double jeopardy clause does not bar extradition; 5) the extradition request was supported by sufficient, properly authenticated evidence; and, 6) ample evidence was submitted by the government to sustain a finding of probable cause that Galanis committed the crime of fraud within the provisions of § 338 of the Canadian Criminal Code.

II

Having no avenue of direct appeal from Judge Newman's rulings and order, Shapiro v. Ferrandina, 478 F.2d 894, 901 (2 Cir. 1973), Galanis seeks a "review" of that court's decision by way of the instant habeas proceeding. Id. In his moving papers, Galanis levels a wholesale attack on the numerous factual findings and critical legal conclusions recited by Judge Newman. In doing so, Galanis misconstrues the scope of review permitted the habeas judge in extradition matters.

In international extradition cases, the role of a

Ruling on Petitioner's Application for a Writ of Habeas Corpus of Hon. Robert C. Zampano, June 16, 1977

petition for a writ of habeas corpus is limited to inquiries concerning only 1) whether the committing magistrate had jurisdiction, 2) whether the offense charged is within the treaty, and 3) whether the evidence demonstrated a reasonable ground to believe the accused guilty. Fernandez v. Phillips, 268 U.S. 311, 312 (1925); Garcia-Guillern v. United States, 450 F.2d 1189, 1191 (5 Cir. 1971).

Applying these principles to the facts in the instant case, it is clear that habeas relief is not warranted. As a "judge of the United States," Judge Newman was authorized to conduct the extradition hearing with respect to Galanis who, because of his residency and arrest in Greenwich, Connecticut, was "found" within the District of Connecticut. The jurisdictional requisites, therefore, were present to support Judge Newman's order. See 18 U.S.C. § 3184; cf. Ornelas v. Ruiz, 161 U.S. 502 (1896); Jimenez v. Aristeguieta, 311 F.2d 547, 555 (5 Cir. 1962), cert. denied, 373 U.S. 914 (1963).

Galanis' attempts, under the guise of his "jurisdictional claims," to relitigate the immunity and speedy trial issues which were unsuccessfully raised in the extradition hearing must be rejected. Judge Newman carefully considered these contentions and resolved the relevant, crucial factual questions against the petitioner. His comprehensive and thoughtful reasoning on these claims is not subject to review

*Ruling on Petitioner's Application for a Writ of
Habeas Corpus of Hon. Robert C. Zampano, June 16, 1977*

by this Court. In any event, the record amply supports his conclusions.

Second, Judge Newman fully examined Galanis' arguments concerning the applicability of the 1971 Treaty on Extradition Between the United States of America and Canada, T.I.A.S. No. 8237, to the crime for which the petitioner is to be extradited. His determination that the evidence and plain meaning of the treaty's provisions "precludes retroactivity" is a logical one. Judge Newman's analysis of the question and his legal conclusions are, by reference thereto, adopted by this Court.

Finally, the finding of probable cause was adequately supported by the evidence introduced at the extradition proceeding. While it is true that certain dictum in Shapiro v. Ferrandina, supra, arguably casts doubt on the competency of Exhibits 2 and 3 received in evidence at the extradition hearing, this Court agrees with Judge Newman's resolution of the issue as set forth in his Memorandum of Decision, pp. 21-29.

Accordingly, the petition for a writ of habeas corpus is denied.

Dated at New Haven, Connecticut, this 16th
day of June, 1977.

Robert C. Zampano
United States District Judge

JUDGMENT OF HON. ROBERT C. ZAMPANO, JUNE 16, 1977

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

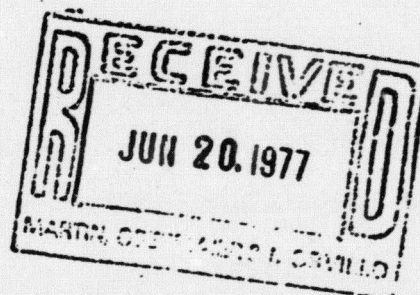
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U. S. DISTRICT COURT
NEW HAVEN, CONN.

JOHN PETER GALANIS

v.

CIVIL NO. N 77-140

ERMEN J. PALLANCK, United
States Marshal for the
District of ConnecticutJUDGMENT

This cause came on for a hearing before the Court, and the Court having duly considered the issues, filed its Ruling under date of June 16, 1977, denying the petition for a writ of habeas corpus,

It is accordingly ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered, dismissing the action.

Dated at New Haven, Connecticut, this 16th day of June 1977.

SYLVESTER A. MARKOWSKI

Clerk, United States District
Court

By

Deputy-in-Charge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----x
UNITED STATES OF AMERICA,

vs.

JOHN PETER GALANIS, a/k/a PETER GALANIS,
Defendant.

:
:
Civil No.
:
N-76-385
:
:
-----x

New Haven, Connecticut
December 3, 1976

B e f o r e:

Hon. JON O. NEWMAN, U.S.D.J.

A p p e a r a n c e s:

RAYMOND L. SWEIGART
Asst. U. S. Attorney
P. O. Box 1824
New Haven, Connecticut 06508

GRAND and OSTROW
375 Park Avenue
New York, New York 10022
By: PAUL GRAND, Esq.

-and-

JOHN MARTIN, Esq. and
CAROLINE BENNEMAN, Esq.

1 MR. GRAND: May I introduce to you John Martin of the
2 New York Bar, and his associate, Caroline Henneman, who are here
3 with me to advise the Court -- we have divided up the work
4 amongst us so that I am handling the witnesses and the motion,
5 and John Martin will argue, make a statement on the motion
6 as -- Weinstein, WEinstein, Schaffer, Hirsch and Lev are local
7 counsel of record in this matter.

8 THE COURT: I don't know that I have it yet, but if
9 you advise me that it's expected, I will rely on that.

10 MR. GRAND: Your Honor, the defendant John Galanis is
11 prepared to go forward with his first witness in connection with
12 the motion, if that's how the Court would like to proceed.

13 THE COURT: Yes.
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25

1 D A V I D B R O D S K Y, called as a witness,
2 having first been duly sworn by the Clerk of the Court,
3 was examined and testified as follows:
4

5 THE CLERK: State your name and address.

6 THE WITNESS: David M. Brodsky. 24 Monroe Place,
7 Brooklyn, New York.

8 DIRECT EXAMINATION

9 BY MR. GRAND:

10 Q Are you presently a member of the New York City law
11 firm of Guggenheimer and Untermeyer?

12 A I am.

13 Q Can you tell us how long you have been a member of
14 that firm?

15 A For two months.

16 Q Prior to that, what was your employment?

17 A Since September of 1973, I have been associated with
18 the firm. Between April, '75 and April, '76, I was on leave of
19 absence from the firm when I served as deputy counsel to the
20 Moreland Act Commission on Urban Development Corporation in
21 New York State and became a member of the firm effective
22 October 1st.

23 Q Am I correct that you were graduated from the Harvard
24 Law School in 1967?

25 A That's correct.

Q And thereafter, between 1967 and 1969, you were law

4
Brodsky - direct

2 clerk to the Honorable Dudley Bonsal, U. S. District Judge, in
3 the Southern District of New York?

4 A That's correct.

5 Q And --

6 A Between 1969 and 1973, I served as an Assistant U. S.
7 Attorney in the Southern District of New York under U. S.
8 Attorneys Robert Morgenthau, Whitney North Seymour, Junior,
9 and Paul Curran.

10 Q In that connection, while you were an Assistant U. S.
11 Attorney, did you meet John Galanis?

12 A Yes, I did.

13 Q Do you see him in the courtroom today?

14 A I do.

15 Q Can you identify him for the record?

16 A He is sitting at defendant's counsel table, extreme
17 right-hand side.

18 Q Focusing on the period September, 1972, did you take
19 charge as an Assistant U. S. Attorney of all cases and investiga-
20 tions in which John Galanis was cooperating with and giving
21 evidence to the U. S. government?

22 A Yes.

23 Q Can you tell me approximately how many cases or
24 investigations were then pending?

25 A My recollection is there were perhaps three indictments

1 Brodsky - direct

2 and there were probably 15 to 20 identifiable investigations.

3 THE COURT: Three indictments against him?

4 THE WITNESS: No, your Honor. There were at that time
5 -- at that time, there were two indictments against him, and
6 there were -- there were two indictments against other persons,
7 but there were three indictments in total. He was a witness in
8 ne and a defendant in two others, and there were other defendants
9 in those other cases, as well.

10 Q In addition, there were approximately 15 other matters
11 that the U. S. Attorney's office was investigating based on
12 information derived from Mr. Galanis?

13 A Yes. In addition to that, there was an SEC civil
14 action entitled SEC against Everest Management, which was an
15 enforcement action in the Southern District which Mr. Galanis
16 was also giving evidence in, and the matters in that civil case
17 and criminal case were the same.

18 Q Immediately prior to September, 1972, in the period
19 of July and August, 1972, was the United States Attorney's
20 office for the Southern District of New York investigating
21 transactions involving the payments of funds in New York City
22 emanating from Champion Savings Company in Canada?

23 A Not specifically emanating -- not specifically Champion.
24 May I elaborate?

25 Q Certainly.

Brotsky - direct

A It's difficult to say specifically Champion. My recollection is that in July and August of 1972, there was an investigation then in the office in which I was asked for a prosecutorial opinion in July or August. One aspect of that investigation involved the tracing of moneys out of the Canadian institution to New York, and then out of New York into the Bahamas, and out of the Bahamas back into New York.

Q Did you, in the course of your investigation, ascertain that Canadian institution was, in fact, Champion Savings Corporation?

A I can't specifically say I ascertained it was Champion. I knew it as Galanis' Canadian institution, but at this moment, I can't remember whether we specifically identified it as Champion. It's my understanding it was, but I can't pin that name to it.

Q Your current understanding now is that it was, in fact, Champion Savings?

A That is correct.

Q Now, did you attend meetings at the United States Attorney's office in the Southern District of New York in July and August, 1972, at which Mr. Galanis was present?

A In August, 1972.

Q At those meetings, was Mr. Galanis specifically questioned about, and did he give information concerning, the

Brodsky - direct

transactions that you have just testified about?

A Again, my recollection is not completely clear. It was either that I sat in on a meeting and was not an active participant in a meeting in which another assistant was questioning Mr. Galanis, or I was briefed afterwards about what Mr. Galanis had told that other assistant, and, again, as I said, the aspect of the Canadian institution was but one aspect of a larger investigation involving moneys, offshore moneys and out of the United States moneys, and -- but I learned in August about moneys coming into the United States from Canada, and we at one point -- whether it was in August or slightly thereafter -- sat down and traced some moneys out of Canada.

Q To the best of your knowledge, was Galanis questioned about those moneys and those transactions?

A My recollection is that he was.

Q Is it further your recollection that Mr. Galanis gave information concerning the same?

A Yes. He was giving information about anything we asked him about.

Q And that included Champion Savings?

A It included his operations in Canada.

Q To your knowledge, did he also give information concerning a man named James Khawly at or about that time?

A Well, Mr. Grand, I remember the name James Khawly.

1
2 Brodsky - direct

3 Galanis.

4 Q Just so I am clear, the information that Mr. Galanis
5 gave concerning -- I think what you described as his Canadian
6 operations, and James Khawly, was all part, was it not, of his
7 continuing cooperation with the U. S. government?

8 A Yes, absolutely. May I answer that question in a
9 slightly different way, because I think -- I don't want there
10 to be a misleading impression created about the investigation.

11 It was very broad, and we, at one time or another,
12 would be speaking to Galanis about many, many different subjects,
13 and this was really at the outset within a few months of the out-
14 set of a major investigation that Galanis was cooperating in,
15 so at any given day, we might be speaking to him on ten
16 different subjects, which might lead to ten other subjects, and
17 my recollection is that in the early days when I was speaking
18 to Galanis, I asked him questions about virtually anything that
19 came to mind. It was almost a stream of consciousness, and it went
20 on for a long time, and it was not in a sense of debriefing.
21 He had been debriefed, but it was an education of myself into
22 this new area investigation, and I spoke to him about a lot of
23 different subjects over many hours --

24 Q The subject --

25 A -- that included Canada.

Q Now, to your knowledge, had Mr. Galanis given earlier

1 Brodsky - direct

2 additional information to any representative of the government
3 concerning his Canadian operations?

4 A To my knowledge, he had told them about his Canadian
5 operations. That would be the SEC.

6 Q In September, 1972, did you as an Assistant U. S.
7 Attorney take charge of all of the Galanis related cases?

8 A Yes.

9 Q So that all matters in which he was a defendant and
10 all matters in which he was furnishing information or evidence
11 to the government came under your direct supervision and control
12 as of September, 1972?

13 A Yes.

14 Q Were you at that time aware of the arrangement under
15 which Mr. Galanis was cooperating with the U. S. Government?

16 A I was.

17 Q Can you tell us what that arrangement was?

18 A The arrangement, as I understood it, was that Mr.
19 Galanis would be -- could cooperate completely with the U. S.
20 Government: that is, the U. S. Attorney's office, the SEC and
21 whatever other agency of the government wanted to speak to him
22 about his activities. It was all of his activities.

23 Q By that you mean he would give full information --

24 A Full, accurate and truthful information we asked, and
25 he would provide documents, he would provide leads, he would be

1
2 Brodsky - direct

3 a government witness in all senses. He would provide information
4 for us both in investigations in which he had a direct part, which
5 he had hearsay knowledge and which he had perhaps second or
6 third-hand knowledge. He was to be made available to the govern-
7 ment when we needed to get information, and he was to testify
8 about matters that he had in his direct knowledge; and in
9 exchange for that, he was to be subject -- he was to plead
10 guilty to -- in cases in which he had a direct active role,
11 totaling maximum of ten years in prison --

12 Q That is exposure?

13 A Exposure -- ten years of potential criminal sentence,
14 and my recollection is \$20,000 in fines.

15 The decision as to how many indictments, how many
16 counts of how many inductments he would plead guilty to, which
17 factual patterns he would be subjected to exposure on, which
18 indictments he would plead would be the decision of the Assistant
19 U. S. Attorney then in charge.

20 Q Namely, yourself?

21 A Namely, me, or whoever succeeded me, but it was -- for
22 all intents and purposes, it was me.

23 Q Was there one other aspect of the arrangement,
24 namely: transactional immunity --

25 A I was going to get to that. He was to be prosecuted
for everything that we decided he would be prosecuted for, but

1 Brodsky - direct

2 for the things he wasn't being prosecuted for, he was given
3 complete transactional immunity. This was a full and complete
4 package, and he was not to be subjected to any other exposure,
5 any other penalties or liabilities by any aspect of the United
6 States Government for his cooperation in these cases.

7 Q Now --

8 A It was commonly referred to as a two-indictment deal,
9 but it really meant the ten years exposure, as I said before.

10 Q After September, 1972, did you have discussions and
11 negotiations with Mr. Galanis' attorney concerning how many
12 counts he would plea to and whether those counts would be
13 felonies or misdemeanors?

14 A There were some conversations in the fall of '72
15 as Mr. Galanis' cooperation -- the extent of his cooperation
16 became clear. There was some conversations to the effect that
17 perhaps the deal ought to be restructured so that he would have
18 a lower exposure, but nothing came of those conversations.

19 I made the decision he would not be subjected to
20 lower exposure.

21 Q In fact, you insisted, did you not, that he plead
22 guilty to two felonies?

23 A Two five-year felonies.

24 Q Did you?

25 A Yes.

1 Brodsky - direct

2 Q In fact, in late 1972 and early 1973, Mr. Galanis
3 did plead guilty to two five-year felonies, did he not?

4 A Yes.

5 Q Were the indictments to which he pleaded guilty, or
6 the counts in the indictment to which he pleaded guilty, chosen
7 by you?

8 A Yes. As a matter of fact -- they were chosen by me
9 and, as a matter of fact, there was an original decision made
10 to have him plead guilty to two indictments, and then when it
11 became clear that the five or six other defendants in those
12 cases, in that one particular case, were all going to plead
13 guilty, as well, and there was not going to have to be a trial
14 which Mr. Galanis would be a witness, I made the decision that
15 he should not plead guilty in that case, but he should plead
16 guilty in a subsequent case.

17 Frankly, as a prosecutorial decision, it was more
18 valuable to have him plead guilty in a case where he was going
19 to be a witness at a trial than have him plead guilty in a case
20 where all the defendants were going to fold, so it became -- at
21 one point he was indicted a third time, so that he could
22 plead guilty to that case.

23 Q I gather that Mr. Galanis expressed a willingness to
24 plead to whichever indictment you chose?

25 A He expressed a willingness, but, frankly, Mr. Grand,

Brotsky - direct

he really didn't have a choice in the matter. That deal had been made, and if he was going to abide by the deal, he was going to have to do what we asked him to do.

The presumption all the way through -- and maybe I don't need to say this, but the presumption was he wasn't going to plead guilty to cases he had an involvement in -- but he had an involvement in so many cases and so many aspects, it was really a question of choosing which of the many frauds he had been involved in he would plead guilty to, and that was a decision I made depending on which way the investigations went.

Q Now, do I understand that the two indictments which were chosen by you as an Assistant U. S. Attorney were, in fact, to cover all crimes committed by Galanis and activities disclosed by Galanis including the matter of his Canadian activities or Champion Savings?

A The answer is yes, it was to cover every fraudulent involvement that Galanis had that came within the jurisdiction of the U. S. Department of Justice.

THE COURT: What was covered?

THE WITNESS: The two guilty pleas, your Honor.

THE COURT: Perhaps I don't understand the sense in which you mean "covered". Do you mean you framed a charge that covered all his activities?

THE WITNESS: No, your Honor.

1 Brodsky - direct

2 THE COURT: This was in satisfaction of all of his --

3 THE WITNESS: Yes.

4 THE COURT: -- of the charges? You don't mean that
5 the charges covered --

6 THE WITNESS: No, the charges were very specific.
7 The charges involved conspiracy to involve -- security laws --
8 in a series of specific stocks, but it was our understanding he
9 would be pleading guilty to that in lieu of being charged in
10 multiple cases for which he had exposure, and it was in
11 satisfaction of all of this offenses that he would be pleading
12 guilty to these two and -- his exchange for giving testimony
13 or evidence in all of his offenses.

14 Q Did the U. S. Government make a decision not to indict
15 Mr. Galanis and others in connection with the Champion related
16 activities?

17 A We never made a decision not to indict him in those
18 cases because as the investigation went on, we just never got
19 back to that original August decision not to prosecute individuals
20 in that case. We -- as the investigation turned in a different
21 direction, so we never faced the decision of: do we frame a
22 charge in this case or not? We just moved away, and as it
23 moved away, we moved in the direction in which the evidence --
24 in which our investigations led us.

25 Q I gather that you -- your investigations -- you moved

1 Brodsky -- direct

2 your investigation elsewhere, not because of a lack of jurisdic-
3 tion or a lack of evidence that a crime had been committed?

4 A Well, not with respect to Galanis, certainly. I mean,
5 it was -- insofar as Galanis was concerned, anything that he was
6 involved in appeared to us he was subject to criminal liability,
7 but we made prosecutorial decisions based with respect to other
8 individuals, and in certain transactions, if the evidence was
9 ambiguous or not sufficient to present to a grand jury, or on
10 their involvement where Galanis was a key witness, so we moved
11 away. This was what happened in July and August where we were
12 tracing funds out of Canada.

13 Q Is that --

14 A Does that answer your question?

15 Q I think so. Let me ask another question. Did you
16 move away because you made a prosecutorial decision that Mr.
17 Galanis' help could be more advantageously used by the
18 government in other cases where there were more defendants or
19 perhaps greater impact?

20 A That's correct. We were -- that's exactly correct.

21 Q But not because of a lack of jurisdiction over the
22 matter or absence of what you understood to be criminal conduct?

23 A Nothing to do with Galanis -- lack of criminal conduct.
24 Galanis, we thought, was liable in multiple cases.

25 Q Including the matter --

Brodsky - direct

A Including the matter of tracing funds out of Canada. There was a fraud involved in -- what we thought was a fraud involved in the July-August episode, but we decided that we had to divide -- this was an enormous case, I am not facetious, there were a series --

Q When you say "case", you mean something more than case?

A The investigation. This was an enormous investigation. At one point there were semiserious conversations going on in the frauds unit as to whether or not we ought to not just carve out a piece of frauds unit and devote ourselves to this mutual -- these mutual funding frauds and offshore frauds that Galanis was testifying about, because it was clear my resources would be used up very rapidly, and we would only be touching what Galanis could testify about, but it was a utilization of resources issue rather than a lack of evidence issue, as to which direction we went in.

Q Was Mr. Galanis sentenced early in 1973?

A I just don't recollect when it was. It was before a specific trial in May, which went to trial in May, and I don't recollect when it was. Whether it was April or February.

Q But, in fact, he was sentenced, was he not?

A Yes.

Q That was before Judge Brieant in the Southern District

1 Brodsky - direct

2 of New York?

3 A That's right.

4 Q Am I correct that he was sentenced on his plea to two
5 separate felony counts?

6 A That's correct.

7 Q Charged in two separate indictments?

8 A That's correct.

9 Q Can you identify Defendant's Exhibit 201 as the trans-
10 cript of the sentencing before the Honorable Charles L. Brieant
11 of John Galanis?

12 MR. GRAND: I am furnishing a copy to the government,
13 your Honor.

14 A Yes, this appears to be the transcript of the sentenc-
15 ing before Judge Brieant.

16 MR. GRAND: I offer it, your Honor.

17 MR. SWEIGART: I have no objection to it.

18 THE COURT: Full exhibit.

19 (Defendant's Exhibit 201 was received in evidence.)

20 Q Mr. Brodsky, in the spring of 1973, were you engaged
21 in the preparation of the United States versus Zane, et al.
22 for trial?

23 A Yes.

24 Q In connection therewith, did you prepare a memorandum
25 which sets forth the arrangement between the U. S. Government

Brodsky - direct

and John Galanis?

A Yes.

THE COURT: Before you move on to that, do you intend to offer the transcript of the entry of the plea?

MR. GRAND: I did not, but I can if you want.

THE COURT: Is it available?

MR. GRAND: Yes.

THE COURT: I think it might be well to have that.

MR. SWEIGART: I am not clear at this moment what it's being offered for. I believe at the time it was for the particular dates, since that was the line of quertioning. We have no problem. We would be willing to stipulate that he was sentenced on that particular date.

THE COURT: I am interested in more than the dates. The claim here -- part of the claim relates to certain agreements surrounding the plea. He has testified to something that was said before the plea, and we are now moving to something that is said after the plea. I would like to know what was said at the plea.

MR. GRAND: I would be happy to submit that to the Court.

MR. SWEIGART: This is the transcript of the --

MR. GRAND: This is the transcript of the sentencing.

THE COURT: Before we get too far beyond that, I would

1 Brodsky - direct

2 like to get to the stage where plea agreements are usually set
3 forth on the record.

4 THE WITNESS: Your Honor, may I --

5 MR. GRAND: I would be happy to address myself to that,
6 your Honor, but preliminarily, I would like to call to the
7 Court's attention -- perhaps the Court would like to read this
8 document.

9 THE COURT: All I am saying now, if the plea proceed-
10 ing is -- has been transcribed, it seems to me it ought to be
11 part of this record if the claim is going to be that there is a
12 plea agreement.

13 MR. GRAND: I don't have copies. Perhaps we could have
14 copies made at a recess today.

15 THE COURT: All right.

16 THE WITNESS: Mr. Grand, I don't know whether there
17 is a question pending, but may I respond with respect to whether
18 or not this is a complete document?

19 THE COURT: The sentencing procedure?

20 THE WITNESS: Yes. In light of your Honor's comment,
21 I want to bring to your Honor's attention there was a document
22 prepared by me and submitted to Judge Brieant prior to this,
23 which was used by the office -- by the U. S. Attorney's office
24 and considered by Judge Brieant as to the nature of Galani's
25 cooperation, which set forth -- my recollection is it was a

1 Brodsky - direct

2 lengthy document -- set forth the nature of his cooperation
3 and the original deal that had been entered into.

4 MR. GRAND: As this document -- this document does
5 not set forth the deal, but it does set forth the nature of
6 Mr. Galanis' cooperation.

7 THE COURT: Again, if there is a document that sets
8 forth the arrangement, I would think we ought to have that.
9 After all, I am not sentencing him, so the issue before me is
10 not how cooperative he was, the issue is what agreement was made
11 to get that cooperation.

12 MR. GRAND: Your Honor: one, we have offered
13 testimony on that agreement; two, I am about to offer Mr.
14 Brody's memorandum on that subject; and three, I am going to
15 offer a transcript before the Honorable Judge Inzer Wyatt
16 setting forth the agreement with the --

17 THE COURT: Is that who took the please?

18 MR. GRAND: No. Judge Brieant.

19 THE WITNESS: Judge Wyatt was the Judge who presided
20 in the criminal trial in -- started in May in which Galanis
21 was a witness. There became an issue where Judge Wyatt wanted
22 to know what the arrangement was with Galanis, and I think at
23 that point -- perhaps it was the same memo I put in before Judge
24 Brieant, or a different memo about there was an office
25 policy at that point that I started to submit to the sentencing

1 Brodsky - direct

2 judges the statement of cooperation and statement of the
3 arrangement. I think that was given to the probation office
4 at one point, too.

5 MR. GRAND: I don't have it.

6 THE COURT: Does the government have that?

7 MR. SWEIGART: We have a copy of a transcript of the
8 actual plea, but I do not believe we have a copy of the
9 particular memorandum that's now referred to.

10 I think there was a plea agreement, a
11 plea sentencing, and these documents reflect a later rehash of
12 what had occurred previously when the matter came up at a later
13 trial where Mr. Galanis was used as a witness.

14 THE COURT: That's not quite what the witness is saying.
15 He says that he submitted a document to the sentencing judge --

16 MR. SWEIGART: That document I don't believe we have.

17 THE COURT: Which reflects the plea agreement. Is
18 that what you're saying?

19 THE WITNESS: That's my recollection, your Honor.

20 MR. SWEIGART: If that's the same as this document, I
21 am not sure, I have no knowledge of that.

22 MR. GRAND: Maybe we can cut through that, since
23 I don't have that document and since Mr. Sweigart doesn't have
24 that document, by asking the witness if the other documents I
25 am going to show him and his testimony that he has already given

1 Brodsky - direct
2 accurately reflect the agreement.

3 THE WITNESS: What I have testified to is my recollec-
4 tion now of what the arrangement was. I don't think it's a
5 significant -- I know there is no significant difference between
6 my recollection of the deal, and the deal, because I lived with
7 it quite -- I remember it quite well, and I lived with it, and
8 the written statements I made to Judge Brieant in February or
9 March of 1973 -- but in connection with that, the only reason I
10 bring it up -- in connection with that, we stated with some
11 specificity what it was that Galanis had told us about in what
12 areas and so forth, so as to give Judge Brieant an indication of
13 magnitude of Galani's involvements, and it was a similar state-
14 ment which was made to Judge Wyatt at the trial when he wanted
15 to know the magnitude of Galani's involvement in judging an
16 issue of cross-examination.

17 THE COURT: Again, I am not really so concerned with
18 how cooperative he was, other than to note there was cooperation,
19 which is apparently part of the consideration for the agreement,
20 but I am very interested in knowing precisely what the agreement
21 was.

22 MR. GRAND: I think he told us that, your Honor, and
23 these other documents, I think, will firm that up.

24 I would call the Court's attention -- would you hand
25 the exhibit to the Court, Mr. Brodsky? -- to the statement of

1 Brodsky - direct

2 Mr. Brodsky at page 5 of the sentencing as follows: "In
3 addition, in the course of his substantial cooperation with the
4 government since July, 1971, he" -- meaning Galanis -- "has
5 admitted serious complicity in other violations of the security
6 laws."

7 BY MR. GRAND:

8 Q Now, I was asking you, Mr. Brodsky, if in the course
9 of the preparation for the United States versus Zane trial
10 whether you prepared a memorandum which accurately reflected
11 the agreement between Galanis and the government?

12 A Yes, I did.

13 MR. GRAND: I have a memorandum dated May 10, 1973.
14 May I have it marked as Defendant's Exhibit 202?

15 Q Can you tell me, Mr. Brodsky, if Defendant's Exhibit
16 202 is that agreement -- or is that memorandum?

17 A Yes.

18 MR. GRAND: I offer it, your Honor.

19 THE COURT: What are you testifying was done with this?

20 THE WITNESS: This is a memorandum prepared May 10th,
21 1973, which was reduced to writing, the previously oral under-
22 standing between Mr. Galanis and myself as to Galanis -- the
23 arrangement with Galanis; the purpose of this document was to
24 elaborate on what I had previously told Judge Wyatt was the
25 arrangement, and he wanted to have a document prepared reflecting

1 Brodsky - direct

2 that so that he may use it and turn it over to the defense in the
3 Zane trial for purposes of cross-examination.

4 There was another reason, as well. There was at that
5 time a proceeding that started in Canada involving the Champion
6 Savings and Loan situation, and we had known -- I was aware of
7 that sometime earlier that year when we were preparing -- I
8 was aware there was an investigation that was -- that had been
9 commenced. I was not aware there had been a complaint or
10 indictment filed.

11 In the latter part of 1972 when we were beginning to
12 prepare for the trial of the United States versus Haggopian
13 before Judge Brieant, in December, we were aware that defense
14 attorneys in that case would attempt to question Galanis about
15 all of his affairs, and I wanted to make very sure that Galanis
16 would not invoke the Fifth Amendment privilege with respect to
17 any questions on cross-examination, so we began to go through
18 all the various involvements that Galanis had to determine that
19 there was not yet -- there was not any area that was open for
20 him to invoke his Fifth Amendment privilege and that -- when that
21 -- that case never went to trial, because all the defendants
22 pled guilty.

23 The same procedure went -- was started again in the
24 United States versus Zane trial, and at that point -- perhaps
25 it was April -- we sought to assure Galanis that the arrangement

1 Brodsky - direct

2 that had been entered into July and carried forward for some
3 year at that point or more than a year, covered him in such a
4 way that he could not legally invoke his Fifth Amendment privilege
5 with respect to transactions that he had in Champion when he was
6 questioned about them at the trial. The Zane trial in May.

7 It was at that point in the trial when the defense
8 attorney said that they, indeed, would question him about the
9 Champion trial, and I represented orally to Judge Wyatt that
10 he had been given immunity on everything having to do with any
11 of his involvement, and there was no Fifth Amendment privilege
12 to be invoked.

13 Judge Wyatt asked me to reduce that oral understanding
14 to writing, and that's how this Exhibit 202 came into being.

15 MR. GRAND: Any objection?

16 MR. SWEIGART: No objection.

17 THE COURT: Full Exhibit 202.

18 (Defendant's Exhibit 202 was received in evidence.)

19 BY MR. GRAND:

20 Q In the course of United States versus Zane trial, do
21 you recall a statement of the agreement concerning Canada
22 being placed on the record?

23 A Yes, I do.

24 MR. GRAND: Mark this next exhibit.

25 Q Can you identify Defendant's Exhibit 203 for

1 Brodsky - direct

2 Identification as the transcript we have just referred to,
3 particularly pages 393 and '4?

4 A Yes. This is a transcript of the trial of a portion
5 of the colloquy with Judge Wyatt out of the presence of the jury
6 having to do with cross-examination by defense attorneys of Mr.
7 Galanis on the Crown charge in Canada and a subpoena which
8 had been served.

9 Q This transcript is a portion of the record in U. S.
10 versus Zane?

11 A What was that?

12 Q The portion of the record of U. S. versus Zane?

13 A Yes.

14 Q Do you happen to recall the date of this transcript,
15 or approximately the date?

16 A It would have had to have been immediately after ---
17 perhaps the day or the day after the document -- the date
18 of the document was entered --

19 Q That's May 10?

20 A May 10. It would have been a day or so after, or
21 even that day, because we knew this was -- we knew the situation
22 was going to arise on trial, and I had orally informed the Court
23 that it was going to arise, reduced the understanding to writing
24 in connection with this proceeding, the proceeding that's
25 represented by Defendant's 203.

1 Brodsky - direct

2 Q So that your best recollection is that transcript
3 was made on or about May 11 or May 15, 1973?

4 A Yes. That's right.

5 MR. GRAND: I offer Defendant 203.

6 THE WITNESS: On page 394, Mr. Grand, line 17, it
7 says -- I am quoted as saying, "Yes, your Honor, it is, and I
8 have prepared a memo to that effect dated today," which would
9 have been the very day. It would have been that afternoon, I
10 guess.

11 MR. GRAND: May 10. Fine.

12 I offer this exhibit. Any objection?

13 MR. SWEIGART: No objection.

14 THE COURT: Full exhibit.

15 (Defendant's Exhibit 203 was received in evidence.)

16 Q Mr. Brodsky, did you on or about April 26, 1973 write
17 a letter to John Keeney, Chief of the Fraud Division, Department
18 of Justice, concerning Mr. Galanis and the Canadian situation?

19 A I did.

20 MR. GRAND: Mark this document as defendant's next
21 exhibit.

22 Q I show you that and ask you if you can identify that
23 letter?

24 A This is a Xerox letter -- a Xerox copy of a carbon
25 that I wrote to Mr. Keeney with a copy to Mr. Sporkin of the

1 Brodsky - direct

2 Securities and Exchange Commission, April 26, 1973.

3 Q Did you cause this letter to be mailed to Mr. Keeney?

4 A Yes, I did.

5 MR. SWEIGART: I have no objection.

6 THE COURT: Full exhibit.

7 (Defendant's Exhibit 204 was received in evidence.)

8 MR. GRAND: Your Honor, this letter sets forth that
9 Mr. Galanis had been given immunity with respect to Champion,
10 and it also states that some of the information which he gave
11 to the SEC is relative to the Canadian charges, as well as
12 making many other relevant statements.

13 Q Let me ask you this, Mr. Brodsky: on page 2 of the
14 letter -- I will show you my copy -- there is a statement:
15 "I am informed by Stan Sporkin at the SEC that Canada will
16 seek Galanis' extradition from the United States on these
17 charges."

18 Can you tell me whether you had discussions with Mr.
19 Sporkin?

20 A Yes, I did. I was very concerned about this episode.

21 Q Did you have discussions with Mr. Sporkin concerning
22 the information disclosed by Galanis?

23 A Yes.

24 Q Do you recall what you told Mr. Sporkin of the SEC
25 concerning the information disclosed by Mr. Galanis?

1
2 Brodsky - direct

3 A I told Mr. -- I reiterated to Mr. Sporkin my under-
4 standing of the deal that had been made with Galanis. He had
5 been given complete immunity as to anything he had and would
6 tell us about, and that included the situation in Canada, and
7 I was extremely concerned by the fact that at what was expected
8 to be, and turned out to be, a major and long trial, Galanis
9 was suddenly going to be either snatched away from the government
10 and put -- extradition proceeding was going to be commenced, or
11 he was not going to be an effective witness because he was going
12 to have the threat of these proceedings hanging over his head
13 when we had done everything we could in July of '71 and there-
14 after to remove all possible impediments to his being a
15 completely cooperative government witness.

16 Q Did you discuss with Mr. Sporkin any of the substance
17 of the information disclosed by Mr. Galanis?

18 A I don't recollect now. I don't recall whether I
19 did or whether I didn't.

20 Q Do you know, sir, whether or not Mr. Sporkin had any
21 communication with representatives of the Canadian Government?

22 A I know that I spoke to Stan Sporkin right around the
23 time of that letter and thereafter, and that he told me that
24 Canada -- the Canadian officials either were coming or had come
25 to the SEC, either were seeking or had sought information about
Galanis, and were intending to come to the U. S. Attorney's

1 Brodsky - direct

2 office, and I said -- told him I would not speak with them
3 because of the problems that it would create and urged him not
4 to speak to them, because -- during the pendency of this trial,
5 because of the problems it would create. I believe he told me
6 that he either had or would.

7 Q Would what?

8 A Would speak with them. Either he had spoken to them
9 already or would speak to them, and the person with whom I
10 worked most closely on these investigations from the SEC,
11 Lester Green, may have told me -- may or did -- I think he did
12 tell me the same thing, that he had met them in Washington.

13 But at this point, my memory is fuzzy as to whether
14 that took place just before the trial or just after the trial.

15 Q Can you tell us the names of any Assistant U. S.
16 Attorneys, other than yourself, whom, to your knowledge, Galanis
17 spoke concerning his Canadian activities?

18 A The only one that I know, that I can speak of from
19 personal knowledge, is Dan Sullivan, who was the predecessor
20 on the case, he was the assistant who -- before whom the
21 original deal -- with whom the original deal was made and from
22 whom -- and who asked me for prosecutorial opinion in July or
23 August of '72.

24 Q Can you tell us whom, to your knowledge, Mr. Galanis
25 spoke at the SEC concerning his Canadian activities?

1 Brodsky - direct

2 A When the -- I can, yes. He spoke to Lester Green,
3 Erwin Borowski and one other person, and I don't recollect who
4 that was. He spoke to those, at least, and he spoke in a
5 context of being debriefed by the SEC as to all of his activities,
6 and he may have spoken to them about it on other occasions.

7 Again, my only knowledge of how extensive he spoke
8 to them is by speaking to those persons who heard him speak
9 and who took notes on it and subsequently I read the notes
10 rather thoroughly.

11 They became, your Honor, a rather famous part of the
12 courthouse lore, because they were so extensive. Judge
13 Edelstein held a rather extensive hearing about what to do
14 with those notes.

15 MR. GRAND: Mark this as Defendant's Exhibit 205.

16 Q Can you identify Defendant's Exhibit 205, which is a
17 letter dated July 13, 1973, addressed to John Keeney, Chief,
18 Fraud Section, Department of Justice; is that letter signed by
19 you?

20 A Yes, that's a --

21 Q And mailed?

22 A Yes, I wrote this letter in response to Mr. Keeney's
23 letter to me dated May 21, '73, of which at this time I have
24 absolutely no recollection, but I do know that following the
25 letter I spoke to Mr. Kenney's aide, and that's reflected --

1 Brodsky - direct/cross

2 a Mr. Murray Stein, and that's reflected in the fact that this
3 letter, although addressed to Keeney, is actually to the atten-
4 tion of Mr. Murray Stein, and there is a reference on it indicat-
5 ing that the Department had a file number on this matter, and I
6 enclosed at that time a Xerox copy of the statement with Judge
7 Wyatt and also my letter of April 26.

8 MR. GRAND: Is there any objection?

9 MR. SWEIGART: No.

10 MR. GRAND: I offer it. This letter also refers to
11 the fact of immunity, your Honor.

12 (Defendant's Exhibit 205 was received in evidence.)

13 MR. GRAND: I have nothing further, your Honor.

14 CROSS-EXAMINATION

15 BY MR. SWEIGART:

16 Q Mr. Brodsky, in relation to the information which you
17 received from Mr. Galanis concerning his Canadian involvement,
18 did you at any time speak with any Canadian authorities concern-
19 ing this information or provide any of this information to them?

20 A No.

21 Q To your knowledge, has any of that information been
22 provided to the Canadian authorities or used in their
23 extradition proceedings?

24 MR. GRAND: I object. Is this question limited to
25 whether he knows of any?

1 Brodsky- cross/Court

2 MR. SWEIGART: That's exactly what I asked.

3 A I have no idea.

4 MR. SWEIGART: I have no further questions, your
5 Honor.

6 BY THE COURT:

7 Q I thought earlier you said you thought somebody at
8 the SEC either had or would speak to the Canadian authorities?

9 A Yes, but, your Honor -- but I don't have any idea
10 what they told him.

11 Q I don't think he is asking what they said. He wants to
12 know whether you know if anybody --

13 A I misinterpreted the question. I thought the question
14 was what information was communicated. Did I know what
15 information was communicated.

16 Q First, do you know whether any U. S. official spoke
17 to Canadian authorities concerning Mr. Galanis?

18 A Yes, your Honor, I know that U. S. official spoke to
19 Canadian official.

20 Q Who did that?

21 A I think that it was Stanley Sporkin and Lester Green
22 of the SEC met with them in 1973.

23 Q Was that before or after you understood you had an
24 agreement with Mr. Galanis?

25 A It was after I understood I had the agreement. Your

Brodsky - Court/cross/Court

Honor, may I refer to my letter of April 26?

Q Yes.

A My recollection is that at or about the time that I wrote the letter, April 26 letter, that where -- there had been a meeting or was going to be a meeting with the Canadian officials, and at least two Canadian officials had come down to Washington from Montreal to speak about the Galanis extradition proceedings with the Department of Justice and the SEC, but I don't know who in the Department -- I don't know who in the Department of Justice they spoke to. I know that Stan Sporkin spoke to them. I believe he told me that, or somebody else told me that.

FURTHER CROSS EXAMINATION

BY MR. SWEIGART:

Q You have no idea what information, if any, they did convey to the Canadians?

A I have no idea what information they conveyed, if any.

MR. SWEIGART: Thank you.

MR. GRAND: I have no redirect.

THE COURT: Just a minute.

BY THE COURT:

Q Would you state again what you understand the agreement was at the time the plea was entered?

A At the time the plea was entered, there were two

Brodsky - Court

pleas, there was a plea in '72 and there was a plea in '73.

At the time those pleas were entered, the deal, arrangement with Mr. Galanis was that these pleas were being entered in satisfaction of an agreement whereby he would cooperate with the U. S. Government, prior information about every aspect of his activities over the previous years involving the securities business and any other business that he was involved in, that he would be given complete transactional immunity for all of the offenses which he gave us information about, that his information would be completely truthful. If we ever found out that his information was not completely truthful, the deal was vacated, and he could be prosecuted as if no such deal had ever been entered into, and the oral immunity was abolished, was repealed.

But that -- and that the offenses to which he pled guilty were at the option of the United States Attorney's office to direct, and that depended on prosecutorial decisions as to which cases would be more advantageous for him to plead guilty in rather than other cases, and he would tell us about everything, and then we would make a decision down the road as to which cases he would plead guilty to and which cases he would be indicted in.

I think that's a full statement of my understanding of what the deal was.

Brodsky - Court

As the deal wore on, as I said earlier in response to a question by Mr. Grand, there was an attempt made to water down the deal, in a sense he would be punished subject to less exposure than originally contemplated. It would be a one-indictment deal rather than a two-indictment deal, but that was quickly negated. And we went back to the original two-indictment deal, but the full immunity aspect of it remained the same.

Q Now, the full immunity aspect, as you call it, you refer to transactional immunity?

A Yes, your Honor.

Q Was there ever an application for a formal grant of transactional immunity?

A No, your Honor.

Q Prior to the time that guilty pleas were entered by Mr. Galanis, was anything said to him as part of this arrangement on the subject of extradition?

A Not to my recollection. I certainly did not have extradition in mind at all until there became -- there was a formal charge, a formal request for extradition.

What was primarily in my mind at the time was making absolutely sure that there was no legal basis on which Mr. Galanis' attorney could assert on his behalf the Fifth Amendment privilege or Mr. Galanis could assert a Fifth Amendment privilege

Brotsky - Court

in a public trial.

Q In the discussions as to the possible use of testimony after this informal grant of transactional immunity, was anything said about the use of testimony in a foreign prosecution?

A No, your Honor. It was not an issue in my mind.

Q Was anything said about the ability of Mr. Galanis to invoke his privilege having been given transactional immunity for fear of foreign prosecution?

A I'm sorry, I don't understand the question.

Q You said you wanted to be sure that he could not invoke his privilege against self-incrimination.

A Yes, your Honor.

Q And, therefore, you made -- you wanted to assure Mr. Galanis and his lawyer that there was full immunity?

A Yes.

Q Transactional immunity, not merely use immunity?

A That's correct.

Q I take it you didn't think you had the power to immunize him from foreign prosecution?

A No. I wasn't purporting that power. My only interest was making sure there was no Fifth Amendment privilege problem within the confines of the United States.

Q That's what I want to know, whether in that discussion the topic ever came up as to whether Mr. Galanis could invoke

Brotsky - Court

the privilege after having been given transactional immunity in order to protect himself from foreign incrimination?

A That discussion did not arise prior to the plea. It did arise after the plea, but --

Q But not prior?

A No.

Q Prior to the plea -- by prior, I don't mean just before. I mean at or prior to the plea -- was there any discussion as to whether Mr. Galanis' testimony or information could be used by a foreign government in a foreign prosecution?

A Not to my knowledge, there was no such discussion.

Q On that topic, no demand was made and no promise was given, is that correct?

A That's correct.

Q When was the first time you recall that any discussion was had with Mr. Galanis on the subject of U. S. involvement in any way in a foreign prosecution?

A It was either just before or at the time of the filing of the Canadian charge.

That's not right, your Honor. It must have been just at the time or just prior to the formal request by the Canadian Government for extradition, which I think was about the same time as the filing of the charge, but the first that I became aware of it was when I had a conversation about the request.

1 Brodsky - Court

2 I think that was in January or February of '73.

3 Q At that time, did you learn of a Canadian intention
4 to extradite, or the actual issuance of some process?

5 A I frankly don't remember which one I learned of first.

6 Q Approximately when was this?

7 A Very early '73. It was within the first three months
8 of 1973, but my recollection was January or February of '73.

9 Q Once you became aware of some prospect of Canadian
10 prosecution, was any -- what was the next step taken in connection
11 with any agreement with Mr. Galanis and the U. S. Government with
12 respect to the prospect of Canadian prosecution?

13 A Your Honor, I remember being asked by Mr. Galanis'
14 attorneys whether I believed it was an amendment to the agree-
15 ment required to -- or was there any clarification needed on the
16 agreement to cover Galanis' involvement in the Champion Savings
17 and Loan situation so that he could continue to be a witness for
18 the government. Was there any amendment or alteration or
19 modification needed to continue that process.

20 And I said I didn't think there was. I thought that
21 he had been bathed successfully for everything he had been
22 involved in.

23 Q Bathed as against U. S. prosecution?

24 A Bathed as against U. S. prosecution or involvement.
25 The question that was put to me was, as my recollection is,

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"Do you think there is anything which should be done or can be done or ought to be done involving the U. S. participation in this request?"

And I said, as far as I was concerned, it appeared to me that the U. S. Government had a taint problem because of the immunity that had already been conferred, that there was a grave difficulty in their participation in this proceeding because of the immunity which had been conferred -- informal immunity which had been conferred on Galanis. I said that without looking at the treaty or any other documents involving extradition, but I had been -- I was then involved in an extradition proceeding involving our government requested Great Britain, and I was aware that the necessity of maintaining -- having our skirts being clean involving any taints or any possible agreements with the accused in the English proceeding. I just translated that into Galanis' situation, and I said I think our government can't really get involved here. "I don't think -- I don't think you need anything more on this agreement to cover you. I think you're covered."

That was an informal conversation in January and February or March.

Q Perhaps I misunderstood before. I thought you indicated that at and before the plea, the subject of extradition never came up?

1 Brodsky - Court

2 A That's correct.

3 Q There was no discussion of Galanis being prosecuted
4 abroad or whether he could invoke the privilege for fear of
5 foreign prosecution, or whether his testimony would, in fact,
6 be used in a foreign prosecution?

7 A That's correct, your Honor. There wasn't the slightest
8 mention, to my present recollection, at any time prior to his
9 plea of any foreign interest whatsoever.

10 Q Is it your testimony that even though those topics
11 weren't discussed, that you felt the transactional immunity
12 agreement that you described, in fact, did provide some protec-
13 tion to Mr. Galanis from a U. S. role in an extradition proceeding?

14 A Yes. That was my opinion when asked the question to
15 look back on the immunity deal that had been entered into, did I
16 believe that that deal covered that kind of situation, and it
17 was my opinion at the time that it did, and I so stated to Mr.
18 Grand or Mr. Grand's associate. I don't remember who I spoke to.

19 I said my understanding is that we have given him
20 complete transactional immunity, that means we can't prosecute
21 it, and that means we can't use the fruits of what -- use either
22 his testimony or the fruits of his testimony against him in a
23 proceeding in which the U. S. Government is a party. And that
24 it was --

25 Q You thought you were -- by making this plea agreement

Brotsky - Court

-- you were surrendering the United States treaty rights to extradite Mr. Galanis?

A I guess that's ultimately what I was saying, but I didn't think of it in those terms at the time when I rendered my opinion. I didn't think by surrendering the U. S. treaty rights -- I don't consider the question of whether there was an alternative way for the government of Canada to extradite him not using the facility of U. S. Department of Justice, that's what I was saying. I was saying the U. S. Government should not get involved here. We made a fairly extensive and broad deal.

Q Was it your view in the U. S. Attorney's office that any grant of immunity carries with it an insulation from extradition, or was there something special about this case?

A No, there wasn't anything special about this case. It was just my understanding that we were insulating him in any way from the U. S. Government moving against him in any proceeding. It really was an -- I just translated that over into U. S. involvement in an extradition proceeding on behalf of the government of Canada.

But as I stated, again, I want to reiterate, at no time prior to the discussion in early '73 had anyone really -- at least I will speak for myself -- had I ever addressed the problem of extradition. I didn't know there was ever going to

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be a problem involving extradition.

Q Is it fair to say that at and prior to the time the plea agreement was made, as I think you put it earlier, you did not have extradition in mind?

A Absolutely not.

Q It was just not a topic that was talked about?

A It was not a topic talked about and not a topic that I talked about and didn't talk about.

Q When it did get raised after the plea was entered because counsel for Galanis expressed a concern once the prospect of Canadian requests were in the picture, at that time you gave thought to whether the prior agreement did provide the protection Galanis wanted, and it was your post hoc view, as it were, that, in fact, the agreement you had previously made did provide that protection?

A Yes.

Q Just to try to help me understand to what extent you then, in spring of '73, once the issue had surfaced, understood there was protection -- let me ask a series of specific questions.

Did you think it meant that if the Canadian officials were to ask you, for example, for copies of interviews with Mr. Galanis, that it would preclude you from surrendering those?

A Yes, your Honor.

Q Did you think it meant that if they asked you for your

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knowledge of his activities, apart from what he had told you, it would preclude you from doing that?

A Information derived independent of Galanis?

Q That's right, but relating to Galanis.

A No, it didn't relate to information that was -- well --

MR. GRAND: I can't hear you.

A I didn't think about information independent of Galanis. I really haven't thought about it until this moment. I thought about not -- information derived directly from Galanis and information derived on the fruits of what Galanis told us, and the reason why I didn't think about it until this moment, frankly, your Honor, is because there was so little information that we had gotten independent of Galanis, it came in such an early point in the investigation, that as a practical matter, would be impossible for me to provide them information that was separate from what I knew about Galanis.

Q Apart from responding to a request either for what he told you or for what others had told you about him, which, as I understand you say, that really wasn't much of an issue, you didn't have much in that, did you understand the agreement to mean that if the Canadian Government came to the appropriate U. S. official and said, "We have our charges against Mr. Galanis. We need no information whatsoever, we simply wish to go through the procedures of removing him from the U. S. to

1 Brodsky - Court

2 Canada, and the only thing we want to know is: where is he, so
3 that we can apply to the appropriate official for process."

4 Do you think it barred that?

5 A Simply location?

6 Q Yes.

7 A Should I tell you what I now think? Because I didn't
8 think of it at the time.

9 Q That's what I want to know. If you didn't think about
10 it at 11 --

11 A I didn't think about it at all.

12 Q All right. Can you tell me if you recall --

13 A May I make a comment with respect to my memo of May
14 10th --

15 Q That's what I was about to ask you. What I want to
16 know specifically about your memo of May 10th, if you recall,
17 why provision number three is phrased as something that is
18 conditional? It starts off by saying that the previous under-
19 standings were reduced to writing, and one is unconditional and
20 two is unconditional. Now, three, which is the one that talks
21 about extradition proceedings is triggered, so to speak, by a
22 conditional clause. It says if the Court allows questioning
23 on the Canadian involvement in the U. S. versus Zane proceeding,
24 then something will happen.

25 Do you recall why it was set up that way?

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3 A I do, your Honor. We had never specifically -- we had
4 never specifically asked Galanis questions and answers arising
5 out of the very charge in Canada. The specific focus of our
6 investigation had never fastened on what Canada was obviously
7 interested in. We had covered, in general, Galanis' involvement
8 in Canada. We covered, in general, funds that came out of the
9 Canadian institution or came into the Canadian institution. We
10 had covered, in general, Galanis' involvement with other persons
11 who had access to those funds or who had access to the account
12 or whatever the Canadian situation.

13 We never specifically said, "Now, John, tell us
14 specifically about this charge and this piece of paper that the
15 Canadian -- or the subject matter of that piece of paper."

16 And what we were concerned about here was that the
17 defense attorneys in the Zane trial would specifically take the
18 complaint and begin to question him line by line as to the
19 substance of the complaint. And that was why we did number
20 three. We didn't -- we wanted to put in writing the concept
21 that other persons' questioning of Galanis about his specific
22 involvement in the Champion situation would not be used, either.

23 Q Did that suggest to you that if the condition didn't
24 happen, that the balance of the provision would not go into
25 effect?

A Well, number three was a very -- was limited to a very

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specific situation, and if that -- if the Court did not allow questioning of the Canadian involvement, then there would not be any questions and answers or other information previously furnished the government to be used. It would be covered by number two.

The ambiguity in number three, in my view, at least, is the phrase "or any information previously furnished to the government", because I thought that was covered by number two.

On reflection, in rereading this memo, I see there could be an ambiguity in number three. I thought information previously furnished to us: that is, the U. S. Attorney's office, was covered by the clause in number two, and while clause number three dealt with the questioning by the defense attorneys of Galanis which would, of necessity, include furnishing to them written statements that Galanis had given us, or notes that we had taken of Galanis involving his Canadian involvement.

Q Was your memo of May 10th the first time that you reduced to writing any aspect of the agreement with Galanis that referred specifically to an extradition proceeding?

A No, your Honor. The first time that I reduced to writing my understanding of the agreement was my letter to Mr. Keeney April 26. That was the first time that I had any occasion to reduce to writing anything involving a deal involving Canada, with the exception of my written statement to

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Judge Brieant.

Q That was at the time of the plea?

A That was at the time of plea. I didn't specifically address myself to extradition. With specific reference to extradition, the first time I reduced anything to writing, according to my recollection, was April 26.

Q Well, your letter of April 26, in the middle of page two, where you report that you have been informed that Canada will seek extradition, you say you believe that acquiescence in the extradition would vastly undermine an extraordinary range of cases.

I take it you're not there telling Mr. Keeney that you think acquiescence would be in breach of an agreement, you're just saying it would hurt the prosecution effort in other cases?

A That's right.

Q Then you continue further on in the letter as to specifically what you want the Canadian authorities told. The first thing you want them told is, again, that if they proceed, it's liable to hurt U. S. prosecutions?

A Yes, your Honor.

Q The second thing you want them told, at the top of page three, is if the Canadians believed that Galanis should be prosecuted, that he should be considered to have been given immunity by our government by reason of his statements to us

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1 Brodsky -- Court

2 after the agreement was entered into.

3 I am not quite clear what you meant by that. You
4 previously told me that you didn't think the U. S. could, in
5 fact, confer immunity against foreign prosecution?

6 A I was not at all concerned, even in this letter, with
7 the issue of whether or not we had immunized him against
8 Canadian prosecution.

9 Q Does two mean you wanted the Canadians to know that,
10 in fact, this man had been given immunity against U. S.
11 prosecution?

12 A Yes, and that the -- and that the U. S. Government
13 would have some problems in dealing with them. Although that
14 issue does not -- that issue is not addressed in this letter, I
15 don't see.

16 Q Indeed, you contemplated the prospect that they may
17 wish to proceed, anyway, even having been alerted by your third
18 provision saying if they insist, in effect, ask them to delay.
19 Isn't that what it comes down to?

20 A Yes, I was concerned in this letter was that there was
21 going -- something was going to happen very rapidly, and that's
22 what I was trying to prevent, something happening, so he wouldn't
23 be snatched away from me, so to speak.

24 Q Is the next written document on the subject of
25 extradition your May 10 memo?

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2 Brodsky - Court

3 A Yes, your Honor.

4 If I may say one further thing about this April 26
5 letter, I think that the thrust of it is conveyed in the next
6 paragraph on page three, the paragraph beginning: "I cannot
7 emphasize enough . . ." That was what was frontally in my
8 mind at that time, is having a Department of Justice do some-
9 thing with respect to the Canadian Government that would allow
10 Galanis to testify without invoking his privilege at the trial.
11 What I think -- what I was thinking of at the time was
12 Galanis will -- and it's reflected in my May 10 memo -- Galanis
13 will have a legitimate reason to raise his Fifth Amendment
14 privilege, I believe, if he knew that what he was telling us
15 could be used against him in the Canadian prosecution, therefore,
16 what we have to do is not use the information against him by
17 immunizing him, and I thought we had immunized him, and I said
18 that in the second page of my letter of April 26.

19 We immunized him against the use of his testimony,
20 we had given him a transaction -- the broadest immunity we are
21 capable of giving for U. S. involvement. I didn't want to
22 interfere with the Canadian Government, and thought through the
23 process of what would happen if our government said we may not
24 participate, but you may participate whatever way you want, you
25 may have access to our courts, but our official Department of
Justice may not participate in the proceedings, retaining outside

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counsel. The outside counsel concept came to me because that was happening in England at the very time involving a codefendant.

Q At the Zane trial, did the defendants, in fact, question about the Canadian charges against Galanis?

A My recollection is that Judge Wyatt limited them very severely in their cross-examination, and they were allowed to ask questions about whether the charge had been made, whether he entered a plea on the charge and whether he, in fact, was guilty of any such charge, but when they began to -- when they indicated to the Judge they could go further than that, Judge Wyatt reduced the scope of their cross-examination rather drastically, and that was the end of the matter.

Q Well, let me ask you this: was there, in your view, questioning on the Canadian involvement sufficient to satisfy the condition in paragraph three of your own memo?

A Your Honor, I would really -- I don't want to beg the question, but I really don't remember specifically enough what they asked. I just remember that I was happy that there wasn't too much more involvement in the Canadian situation in my file, and we went on.

I would have to take a look at Galanis' cross-examination, which I have not, in fact -- never read since the trial.

Q When did you leave the U. S. Attorney's office?

A I resigned effective September 1st, but, in fact, left

1 Brodsky - Court

2 the office in late July.

3 Q Of?

4 A '73.

5 Q So your letter to Mr. Keeney of July 13 was pretty
6 close to your last involvement with this matter, your last
7 official involvement?

8 A Yes, it was.

9 Q In fact, is there any other document from you after
10 July 13 to any U. S. official on the subject of possible
11 extradition of Mr. Galanis?

12 A I am sure there is not. I went through my personal
13 correspondence files in connection with this appearance and
14 found nothing other than the three documents which have been
15 furnished today.

16 Q Are you aware of communications generated within the
17 government after you left?

18 MR. GRAND: Could I have the question again?

19 Q Are you aware of communications generated within the
20 government after you left, on the subject of the U. S. role in
21 any extradition proceedings against Mr. Galanis?

22 A I am aware of that. I had a conversation within the
23 last several days with Assistant U. S. Attorney who inherited
24 many of the Galanis matters from me.

25 Q Who is that?

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1
2 A Mr. Lowe, John Lowe, who -- shall I go on?

3 Q Yes.

4 A -- who related to me that the Canadian -- that the
5 Department of Justice and the Canadian Government had furnished
6 to him substantial quantities of information about Galanis, the
7 Galanis extradition, in an effort to have the proceedings start
8 in the Southern District of New York. Prior to its being
9 commenced in the District of Connecticut. And Mr. Lowe told
10 me that he was pretty concerned about being involved in the
11 proceeding, because he thought he might end up being a witness
12 at some point as to having had conversations with Galanis about
13 the immunity deal, and he referred the matter back to Mr. Stein,
14 or whoever in Mr. Stein's office is handling the extradition
15 request, with the comment that the proceedings should be
16 commenced in the District where Mr. Galanis was found, and
17 since he resided in Connecticut, that's where he was found.

18 Q Who gave that advice?

19 A Mr. Lowe.

20 Q Mr. Lowe did?

21 A Yes.

22 Q To --

23 A I believe it was to Mr. Stein, who, I think, is still
24 in charge of the extradition area in the Criminal Division.

25 THE COURT: All right. Do you want anything further

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2 Brodsky - Court

3 on that?

4 MR. GRAND: No.

5 MR. SWEIGART: Nothing further.

6 THE COURT: Excuse the witness.

7 (Witness excused.)
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1 B A R R Y F E I N E R, called as a witness,
2 having first been duly sworn by the Clerk of the Court,
3 was examined and testified as follows:

4 THE CLERK: State your name and address.

5 THE WITNESS: Barry Feiner. Woodland Road, Harrison,
6 New York.

7 DIRECT EXAMINATION

8 BY MR. GRAND:

9 Q Are you a lawyer admitted to practice in the State
10 of New York?

11 A Yes.

12 Q Are you with a firm?

13 A Yes.

14 Q Can you tell me the name of your firm, please?

15 A Feiner, Chernis, Curtis and Goldman.

16 Q When did you graduate from law school?

17 A 1959.

18 Q What law school?

19 A Columbia.

20 Q Have you been employed as an attorney with the
21 Securities and Exchange Commission?

22 A Yes, I have.

23 Q Can you tell me the period, please?

24 A From approximately 1960 through 1964.

25 Q And what was your title when you left the Securities

Feiner - direct

and Exchange Commission?

A I was an enforcement chief in New York regional office.

Q Since that time, you have been in private practice?

A Yes, I have.

Q Do you know a man named Jacob Graber, G-r-a-b-e-r?

A Yes, I do.

Q Can you tell me, sir, whether in or about December, 1973 you had a conversation with him?

A I am not certain of the date at this time, but I did have a conversation with Mr. Graber.

Q Let me show you a letter written by me to Mr. Graber, dated December 18, 1973, and ask you if that refreshes your recollection as to when you spoke to Mr. Graber?

A Yes, it does.

Q Can you tell us, as best you can recall, when your conversation with Mr. Graber took place?

A In early December of 1973.

Q Was that in person or on the telephone?

A On the telephone.

Q Did you call him, or did he call you?

A He called me.

Q And did he identify himself to you?

A Yes, he did.

Fainer - direct

Q Did you recognize his voice?

A Yes, I did.

Q Did you know him prior to that date?

A Yes, I did.

Q Did you know him as a result of your having worked at the New York Regional Office of the Securities and Exchange Commission?

A I can't be 100 percent certain of that. I don't recall whether he was there at the time I was there, but I could have met him that way, or after I left I had -- I handled numerous cases which involved SEC action, and it's possible that I met him in connection with those cases.

Q But there is no question that as of the time of your conversation, you knew him and were able to identify his voice when he called you on the telephone?

A No question at all, sir. I have known him for some years prior to that time.

Q Can you tell us what the conversation was that took place between you?

A Mr. Graber asked me if I represented a Mr. Thomas Esposito and indicated to me that he wanted some information from Mr. Esposito, and I indicated that I did at that time represent Mr. Esposito on some matters, and asked him what the information was. My recollection was that I think it had to do with some

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Feiner - direct

brokerage accounts, although I am not 100 percent certain, but I did ask him what his investigation was all about, since I was concerned as to whether or not Mr. Esposito was personally involved in the investigation.

THE COURT: Was Graber with the SEC?

THE WITNESS: Yes, he was.

Q Let me continue that. Was Mr. Graber, to your knowledge, in December of 1973, employed by the New York Regional Office of the SEC?

A Yes, he was. In any event, Mr. Graber said he had been asked to assist the Canadian Government in gathering information relative to a proposed or already existing extradition proceeding against Mr. Galanis. At that time, I informed him that I had also represented Mr. Galanis at times in the past, I was a personal friend of Mr. Galanis, and, in any event, did not want to be put in a conflict situation. I further informed him that I would inform Mr. Galanis and Mr. Galanis' attorney about the conversation.

Q Did you thereafter inform Mr. Galani's attorney about the conversation?

A Yes, I did.

MP. GRAND: Your Honor, I have nothing further. I would, if there is no objection, like to offer my letter of December 18, 1973 to Mr. Graber, which refers to the conversation

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Feiner - direct

in which Mr. Feiner advised me, when it states, in part: "Based on telephone conversation with you, other members of the staff of the SEC and with an attorney in private practice, I understand that . . ." This letter is already a part of the record since it's attached to one of our notices of motion, but just for clarification, I would offer it, if there is no objection.

MR. SWEIGART: Your Honor, I believe I would object to that because I don't believe the letter itself has any merit as an element of proof as to what Mr. Grand understood or what he alleged or what he believed. I don't believe that's particularly at issue, particularly with this witness. It was only used to refresh his memory, and I don't believe it's necessary to be admitted into evidence.

THE COURT: What's it offered to prove?

MR. GRAND: It is offered to prove its contents, your Honor, for whatever merit those contents have. I don't know if you have seen it. It's part of the motion.

MR. SWEIGART: We would certainly object to it being offered to prove its contents, your Honor. It merely contains allegations that Mr. Grand made, which I don't believe there is any basis for those being admitted, and certainly for this letter as proof of the content of those allegations, other than the fact that Mr. Grand did make those allegations, and I don't think that's particularly relevant.

Feiner - direct

MR. GRAND: I think it says considerably more than allegations, because it does state that based on telephone conversations with you and other members of the staff, I understand your superiors at the SEC have assigned to you the task of assisting Canadian Government officials in their investigation of the facts underlying a complaint dated February 6, 1973, so it does go beyond allegations.

As I said, it's already part of the record since it is attached to my affidavit in support of a motion. I thought it might simply, for order sake, make sense that it be marked as an exhibit and come into evidence.

MR. SWEIGART: Again, your Honor, this reflects Mr. Grand's understanding, and, of course, I think as an attorney here his offering evidence is a bit irregular. His making affidavits or taking the witness stand, of course, raises certain problems of conflict, and I believe, also, again, that his understanding is, of course, irrelevant to this proceeding.

THE COURT: Well, I think I will deal with it this way. It can become a full exhibit. I think counsel is perhaps endeavoring not to be in a position where he has to be a witness. It seems that it's at least admissible to show that a certain contention was put to the government official, arguably under circumstances where if it wasn't true, a response correcting the error might have been expected. Whether that is sufficient to

Feiner - direct/cross

establish something is another question, but it's at least admissible for that purpose.

MR. SWEIGART: May I have a copy of it?

MR. GRAND: You have one copy in the motion papers. I will check and see if I have another, and I will certainly give it to you if I do.

(Defendant's Exhibit 206 was received in evidence.)

MR. GRAND: No further questions.

CROSS-EXAMINATION

BY MR. SWEIGART:

Q Mr. Feiner, to your knowledge, did Mr. Graber deliver to the Canadians any information in his possession which he had obtained or had been obtained by the SEC from John Peter Galanis?

A I have no knowledge of that, sir.

MR. SWEIGART: Thank you. No further questions.

MR. GRAND: Perhaps for the record I should say I never did receive a response to that letter.

MR. SWEIGART: Your Honor, I believe that's testimonial evidence which really, at this point, should not be admitted on the record.

THE COURT: I don't think there is anything improper. Certainly, if there is any challenge to it, the information is obviously within the possession of the government, so there is certainly no unfair advantage being taken by putting that

Feiner - cross

absence of a response on the record.

You're excused.

(Witness excused.)

MR. GRAND: That concludes our testimony on the motion, your Honor.

MR. SWEIGART: Your Honor, at this time, without prejudice, of course, to our continuing, we would request the Court to overrule the motion, because we do not believe there has been any showing at all that any information given by Mr. Galanis to the government has in any way been used by the Canadians or delivered to the Canadians or made available to them in any way whatsoever in support of this present extradition proceeding and, therefore, I don't believe it should really be required of the government to go forward at this point.

THE COURT: Well, the matter is not entirely clear, but -- and I am certainly not about to rule at this point on any of the pending questions, neither as to what the defendant's burden is to show breach of the agreement -- but I am concerned that part of the agreement appears to deal with the government's role in an extradition proceeding.

I am far from clear in my own mind as to exactly what the government undertaking was, as to what their power was, and as to what ultimately, at the most appropriate levels, the position of the government is on this matter; but postponing

1 those for a bit, some part of the agreement seems to say some-
2 thing about extradition proceedings and the government's role
3 in them.

4 MR. SWEIGART: Your Honor, I think it fairly clearly
5 states that the government would, of course, not be part of
6 an extradition wherein testimony or other evidence gained through
7 Mr. Galanis was used against him.

8 We are prepared to go forward and show that none of
9 the evidence given by Mr. Galanis was, in fact, conveyed to the
10 Canadians or used in any way in this extradition proceeding.
11 In other words, we are prepared to show that --

12 THE COURT: I am going to leave it this way: I don't
13 think this is an appropriate situation to try to make a lot of
14 piecemeal rulings --

15 MR. SWEIGART: We are prepared to go forward with our
16 case.

17 THE COURT: If your view is I ought to deny the motion
18 based on what I have heard, or dismiss the motion or overrule
19 it, as you put it, I am not going to do that, so that if you wish
20 to put on evidence to meet the claims, I think you ought to do
21 that.

22 MR. SWEIGART: Well, your Honor, thank you. We would
23 first like to call to the stand Mr. George Prenovost.

1 G E O R G E P R E N O V O S T , called as a witness,
2 having first been duly sworn by the Clerk of the Court,
3 was examined and testified as follows:
4

5 THE CLERK: State your name and address.

6 THE WITNESS: George Prenovost. 5962 Dukane Street,
7 Montreal.

8 DIRECT EXAMINATION

9 BY MR. SWEIGART:

10 Q Mr. Prenovost, what is your occupation?

11 A I am Director General of the Inspection Service of
12 the Department of Consumers, Cooperatives and Financial
13 Institutions of the Province of Quebec.

14 Q In the course of your occupation as such, did you have
15 occasion to direct the investigation into the matter of Champion
16 Savings Corporation and John Peter Galanis?

17 A I did.

18 Q During that investigation, did you receive information
19 from the authorities of the United States which had been obtained
20 by them from John Peter Galanis?

21 MR. GRAND: I object. No foundation for that. How
22 could he know? If they want to ask him -- the first question that
23 would be appropriate -- the question: did he get any information
24 from the U. S. authorities, thereafter, we can explore the source
25 and the basis for the acknowledgement of the source --

THE COURT: Didn't he ask that, did he get any

Prenovost - direct

information from the --

MR. GRAND: Pardon me?

THE COURT: I thought he asked --

MR. GRAND: He asked him if he got any information from the U. S. authorities, which derived from -- we ought to take it one step at a time, and explore the foundation before we get answers.

THE COURT: Well --

MR. SWEIGART: I will withdraw that question and rephrase it.

Q Mr. Prenovost, during that investigation, did you receive information from the authorities of the United States?

A Yes, sir.

Q Could you please detail for the Court the information that you did receive from the United States?

A In the month of December, 1973, I sent to New York one of my inspectors in the company of an R.C. M.P. officer to obtain some information concerning the Galanis case. They met with Mr. Jacob Graber of the SEC, and some information was obtained.

Now, as I recall, there was a question of getting a photocopy of the statement of Agawan Trust Company in the offices of a U. S. stock broker called Stanton, I believe.

MR. GRAND: Called what?

Prenovost - direct

THE WITNESS: I believe it was Stanton, the name of the stockbroker.

Q A copy of said statement was obtained. Also, we wanted some information about the market values of two stocks. One was Unisystems, and the other was Algonquin.

We obtained some information regarding the quotations and the daily values of those stocks.

Another thing we obtained was some serial numbers on some share certificates of the Unisystems stock.

To my recollection, that was all that was obtained. We had been promised something else regarding Irving Trust Company, but that information we never received.

Q Do I understand you to say, then, that you did not receive copies of any statements made by John Peter Galanis?

A Never.

Q You did not receive any copies or transcripts of testimony given by John Peter Galanis?

A Never received and never saw it.

Q You did not receive any copies of handwritten notes which might have been made from statements given by John Peter Galanis?

A No, sir.

Q To your knowledge, did the information you received come in any way from John Peter Galanis?

Prenovost - direct

MR. GRAND: I object, unless there is a foundation as to how he had any knowledge one way or another.

THE COURT: Well, he asked him to his knowledge, so we will just have to see what he knows on that subject.

A My inspector, Mr. Gendron, reported to me that Mr. Graber had called on telephone the stockbroker in order to obtain photocopy of the Agawan Trust Company account, and that also he had obtained the other information regarding share certificate numbers and stock quotations in the same manner.

Q The information that you received from the office of Mr. Graber were from the stockbroker Stanton?

MR. GRAND: I object to that unless we have some basis for the man testifying as to the source of the information.

THE COURT: You're telling us what your investigator told you, isn't that true?

THE WITNESS: That's right.

MR. GRAND: Object to that on the grounds of hearsay. I permitted the other because it was exploratory. Now we are getting into what the case inspector told him, and I assume Mr. Gendron will not be here as a witness.

MR. SWIEGART: This is an extradition proceeding, and one of the aspects of an extradition proceeding is to short-cut many of the procedural technicalities that are usually in these proceedings, the regular rules of evidence in a criminal

Prenovost - direct

and civil procedure do not generally apply, and that one of the factors is, in order to save the demanding country having to fly down every single one of its witnesses at great expense, to put them on the stand in order to prove its entire case here before this Court.

MR. GRAND: We are not talking about proving the case, your Honor, we are not talking about whether hearsay is permissible to prove probable cause to authenticate motion. We are talking about what is permissible on these motions.

THE COURT: I am going to let him testify. It's not clear to me at the moment which issues are ultimately the ones where a dispute needs to be resolved. It may be there will be certain issues where on a particular issue the government cannot prevail in the absence of evidence normally admissible, but it may also be that on some issues they can use hearsay, so I am going to take the testimony and then determine its proper use.

MR. SWEIGART: Repeat the question, please.

(Question read.)

A Regarding the Agawan Trust Company, that came from Stanton.

Q Mr. Prenovost, are you familiar with the documents presented by Canada to the U. S. in support of the request for extradition of John Peter Galanis?

A Yes, sir, although it's some time since I have seen

Prenovost - direct/cross

1
2 them, because that was prepared a long time ago at my direction;
3 I am familiar with them.

4 Q Were these documents, or the information and testimony
5 contained therein, obtain in any way through cooperation or
6 information supplied to you by the United States or any of its
7 agents or agencies?

8 A No, sir.

9 MR. SWEIGART: I have no further questions, your Honor.

10 CROSS-EXAMINATION

11 BY MR. GRAND:

12 Q What documents were you referring to in your last
13 answer, sir?

14 A The documents produced, the mass of documents produced
15 with the extradition proceedings.

16 Q When is the last time you saw those documents?

17 A In their original form, was some time ago, but in
18 their partial form, recently enough.

19 Q Have you seen them since they were bound in red ribbons?

20 A No, sir.

21 Q Do you know, sir, precisely which documents which
22 may have been assembled in the course of your investigation
23 are included within the red ribbons?

24 A I certainly could not give a list of them because
25 there is too many and it's too long ago, but if I could look

Prenovost - cross

at tl I would certainly recognize them.

Q When you testified that no information was derived from the --

MR. GRAND: May I have the last question and answer read on direct examination?

(Record read.)

Q You have testified this morning, have you not, that at least three separate kinds of information or data were supplied to you through the assistance of the U. S. Government?

A You mean this morning?

Q Yes.

A Or just recently?

Q This morning.

A I have --

THE COURT: What you just told us about.

A Well, what I said was that we obtained photocopies of the account of the Agawan Trust with a broker called Stanton. We also obtained stock quotations on two stocks, Unisystems and Algonquin and --

Q Certificate numbers?

A Yes. What was the daily value? And we also obtained some serial numbers on some share certificates of Unisystems Corporation. This is what we obtained.

Q And you obtained that information, did you not, as

Prenovost - cross

part of the investigation that you were directing into
Champion Savings and John Galanis?

A Yes, sir.

Q And it was that investigation that led to the
compilation of documents which were presented here in this
extradition proceeding?

A It could be said so, yes.

Q Can you tell me when you commenced the investigation
into Champion Savings and John Galanis?

A Informally, it would be somewhere in 1971.

Q I assume you are aware that the order which is part
of the extradition proceedings appointing you a commissioner
of investigation was dated May 9, 1973?

A There are more than one order, sir.

Q That may be. There is only one I have had access to.

A There are more than one, but the --

Q The answer is, whatever the orders say, on an informal
basis, you commenced your investigation of Champion Savings and
John Galanis sometime in 1971?

A Yes.

Q Can you tell us how long you continued that
investigation?

A On and off, until the end of 1973. There were some
periods when nothing was being done, of course, and --

Prenovost - cross

Q Can you tell me how long the periods were between 1971 and the end of 1973 during which nothing was being done on this investigation?

A No, I could not tell you.

Q Months on end?

A There could be months when practically nothing happened. You would be waiting for a letter.

Q In any event, the investigation ended sometime prior to the end of 1973?

A Just about the end of 1973. I would say when we discovered that we could not get any assistance from the United States, we said we will go with what we have.

THE COURT: When was that?

THE WITNESS: When Mr. Gendron came back from New York and I reported that we had received practically no assistance, we came to the conclusion that was about as far as we could go.

Q When you say you ended the investigation when you discovered you could get no assistance from the United States, you mean no further assistance from the United States, correct?

A Well, what we felt was --

Q I am not asking you what you felt. You said --

A I think it's important --

Q You said, did you not, that you stopped the investigation when you could get -- when you discovered you could get

Prenovost - cross

no information from the United States? Did you not say that a moment ago?

A Yes.

Q Isn't it a fact that you had already gotten information from the United States and, therefore, what you meant was that you discovered you could get no further information from the United States, and I think you can answer it yes or no?

THE COURT: Just a minute. You can't ask him what he meant and at the same time preclude him from telling you what he meant.

MR. GRAND: I will withdraw the question.

Q Is it not a fact, sir, at the time you stopped the investigation you had already received some information from the United States?

A We had received some information.

THE COURT: Are those the items you told us about this morning?

THE WITNESS: That's correct, your Honor.

THE COURT: No others?

THE WITNESS: No others.

Q Mr. Prenovost, were you the person solely in charge of the investigation?

A I was, let's say, generally responsible for the investigation, because it was being carried out by my service,

Prenovost - cross

but I had some people working on it.

Q People working under you?

A Yes, and working on the case.

Q One of those people was Claude Gendron?

A Correct.

Q Can you tell us who else worked under you on this investigation?

A I would have to say it was mostly Mr. Gendron.

Q Anyone else?

A Not that I can recall.

Q Did you make any attempt to refresh your recollection before coming here to determine how many people worked under you on this investigation?

A No, I did not attempt, because I had a fairly clear picture. At the beginning -- now I recall -- at the beginning when I say that informally we started looking into the case, there was a Mr. Belliveau.

Q Would you spell that for me?

A B-e-l-l-i-v-e-a-u.

Q You say he worked on the case in its early stages?

A Yes.

Q And what did he do in connection with the case?

A It was mostly examining what was happening to the portfolio of Champion Savings from month to month.

Prenovost - cross

Q I assume that Mr. Belliveau worked on the investigation sometime in 1971 and 1972?

A That would be -- I would think that would be in late '71.

Q Do you know, sir, of your own personal knowledge, whether or not Mr. Belliveau spoke with any representatives of the U. S. Government at any time during the course of his investigation?

A To my personal knowledge, as far as I know, he never spoke with any representative of the U. S.

Q So far as you know?

A So far as I know.

Q But I assume that everything he did in the course of his investigation was not conducted in your presence?

A Necessarily so.

Q Now --

THE COURT: Did he report to you what his investigation -- how his investigation was proceeding?

THE WITNESS: Oh, yes, your Honor, he kept me posted, whatever was being done, I am made aware of.

Q Now, Messr. Gendron, when did he commence working on this investigation?

A I would guess 1972.

Q Do you know when in 1972?

Prenovost - cross

A No.

Q In any event, it was -- I withdraw that.

Now, do you know, sir, of your own personal knowledge, whether Mr. Gendron talked to any representative of the U.S. Government at any time during the course of the investigation while he worked on it?

A To my personal knowledge, the only time he spoke with someone from the United States was in December, 1973, when he went to New York and spoke with Mr. Graber.

Q Do you know of your own personal knowledge whether he either traveled to New York or the United States or spoke to representatives of the United States at any other time?

A Not to my knowledge.

Q And, again, I assume that all things that he did in connection with this investigation were not done in your presence?

A That's correct.

Q Now, you have recalled the name Belliveau. Do you recall the names of anyone else who worked on this investigation other than you, Mr. Belliveau and Mr. Gendron?

A Not that I can recall, but since we are a larger service, in the case of any work that is being performed, it can happen that the person in charge may ask the assistance of someone else for a day or two, and in that way, that is possible,

Prenovost - cross

but I certainly do not recall who could have been called to give some assistance in that way.

Q It's likely that such assistance was called for and used?

A I would think so, because in a fairly large case, that normally happens.

Q In the course of this investigation, did you work with employees or members of the Quebec Securities Commission?

A We carried out the investigation for the Quebec Securities Commission, so, therefore, we are in constant rapport with them.

Q As part of your being in constant rapport with the Quebec Securities Commission, did you disclose to the Quebec Securities Commission from time to time the progress of the investigation?

A Normally, I would, yes.

Q Can you tell me who at the Quebec Securities Commission you made such disclosures to?

A Normally, it would be the president, or it could be a commissioner.

Q And that was done in this case as is normal?

A That's a normal -- they might ask how we are getting along.

Q Can you tell me, sir, whether the president or a

Prenovost - cross

commissioner or anyone else at the Quebec Securities Commission ever spoke to an official of the U. S. Government in the course of this investigation?

A I do not know, sir.

Q In the course of this investigation, did you also report to or have dealings with any other Canadian governmental agency?

A No, sir.

Q What about dealings with the trustee for Champion Savings?

A Well, the trustee, as far as we are concerned, was another officer involved in the various dealings, and we had no particular dealing. We dealt with him as we dealt with the trust company that was charged with supervising the funds, the portfolio.

Q You say that so far as you were concerned, the trustee was another officer?

A In time, when Champion Savings became insolvent and a trustee was appointed to liquidate the affairs.

Q Did you in any respect work with him? That man's name was Zwaig? Z-w-a-i-g?

A Yes.

Q Did you have occasion to work with him or to report to him or to have discussions with him about your investigation

Prenovost - cross

and his investigation?

A Very little. Surely, as I recall, at the beginning we must have had some dealings with him to clarify situations, but that would be about the limit of the scope. It was his job and we had nothing to do with it.

Q To your knowledge, did -- I will withdraw that.

Do you know whether or not he had any contact with any governmental official or employee in the United States?

A Not to my knowledge. I don't know.

Q Did he ever make any communications to you concerning information he might have gotten from the United States?

A Certainly not.

Q Have you personally made any trips to the United States between 1971 and 1976?

A Yes.

Q On any of those trips, did you meet with any official of the U. S. Government or any employee of the U. S. Government?

A Between 1971 and 1976? Yes, I did. 1972.

Q I don't want to pry into what is Canadian governmental business, but can you tell me, sir, whether in 1972 or that occasion it had any relation whatever to Champion Savings or John Galanis?

A None whatever, sir.

Q It was a wholly different matter?

Prenovost - cross

A. Wholly different. Took place in the State of Arizona.

Q Have you, during that period, in connection with the Champion Savings-Galanis matter, had any telephone conversations with any representative of the United States Department of Justice, Department of State, or Securities and Exchange Commission?

A No, sir, but I did speak with Mr. Green.

Q He is an employee of the Securities and Exchange Commission?

A That's why I mention it, yes.

Q Now, when did you --

THE COURT: You said Mr. Green?

MR. GRAND: That's Mr. Lester Green, who is sitting in the courtroom in the spectator's section, your Honor, second in from the -- second in from your right.

Q When did you speak to Mr. Green?

A I cannot recall exactly when it was. I would say maybe a year ago, or a year and a half ago, and --

Q Can you tell me where you spoke to him?

A Well, I spoke to him on the phone, as well, as I can remember. He came to Montreal and he came to my office. And --

Q How long was he in your office?

A A couple of hours, I would say.

Q And during that couple of hours, am I correct the

Prenovost - cross

subject of discussion was Champion Savings and John Galanis?

A Part of the conversation was that, and the conversation was limited to agreeing that we would not discuss in any way, shape or form the Galanis matter so as not to endanger our respective positions. And then we went to lunch.

Q Are you saying that Mr. Green came from Washington to Montreal solely to tell you that neither government would have any contact with each other?

A I don't know if that was his original intention. I think not. But I had my consul present, and we came to the conclusion that we would not exchange any information on either side, and that was that.

Q You are saying it took two hours of meeting to agree not -- not, I emphasize -- to discuss the Champion-Galanis matter?

A When I say he was in my office a couple of hours, we went to lunch and maybe had something else to discuss with somebody else, but whether he was actually in my office and we talked about that 15 minutes, and then we talked of the weather for half an hour, I don't recall.

Q I think you said he was in your office for two hours.

A I think so, but we also went to lunch.

Q Was there any other subject that was discussed that you now recall other than the subject of Champion and Galanis?

Prenovost - cross

A Not that I recall, no.

THE COURT: Was that the first discussion you had with a United States official that indicated to you that information would not be forthcoming from the U. S.?

THE WITNESS: We never were informed officially that information would not be forthcoming, but we were given to understand that it would not be forthcoming, and we had more or less to draw our own conclusions after the December, 1973 visit of Mr. Gendron to New York. We were never informed officially, but we were given -- there was some agreement, and there was no help coming.

THE COURT: Are you able to tell me a little more about how that understanding was conveyed to you?

THE WITNESS: I believe it was conveyed in the form of Mr. Graber maybe telling Mr. Gendron: "Look, I am sorry, I can't do any more for you. There is some agreement, and I am told to hold back."

THE COURT: Are you referring to the meeting in December, '73?

THE WITNESS: Yes. It's after that visit of Mr. Gendron to New York that we came to the conclusion that there was some agreement between Mr. Galanis and the American authorities, and, therefore, that we could not expect any assistance from U. S. authorities.

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Prenovost - cross

Q Despite your understanding in December, 1973 that there would be no more information coming from the Americans, you and Lester Green met thereafter?

A Yes, sir.

THE COURT: Let me be sure I understand this. Your inspector's name is Gendron?

THE WITNESS: Correct.

THE COURT: Before his visit to Mr. Graber in December, '73 --

THE WITNESS: Yes, sir.

THE COURT: -- had you made any request of U. S. officials for information concerning Champion or Mr. Galanis?

THE WITNESS: Not that I can recall, sir.

THE COURT: Prior to that meeting in New York, did you have any reason to think the United States would be reluctant to give you information if you made such a request?

THE WITNESS: No, sir.

THE COURT: Can you tell us how far along your investigation was in December, '73?

THE WITNESS: For all purposes, it was complete, sir.

THE COURT: When I say your investigation, I mean of the matter which resulted in the charges that your agency brought against --

THE WITNESS: Yes, that was complete. We just wanted

Prenovost - cross

to further our case.

THE COURT: Was your sending of Mr. Gendron to learn specific information in connection with the Champion matter?

THE WITNESS: Yes, sir, pursuant to some information we had obtained in Switzerland in the month of October, and we had a few more leads that we wanted to push forward, and that was the purpose of Mr. Gendron's visit to New York.

THE COURT: Did Mr. Gendron make requests of Mr. Graber other than the three items you have told us about?

THE WITNESS: Yes, sir. We wanted to have some information regarding the account of Woodruff and Company at the Irving Trust Company.

THE COURT: Is that the only thing extra?

THE WITNESS: Yes, sir.

THE COURT: Did Mr. Graber decline to give that?

THE WITNESS: No. At the beginning, he issued a subpoena, he told Mr. Gendron he was issuing a subpoena, and that the information would be available in a short time.

THE COURT: Did that concern Champion and Galanis?

THE WITNESS: Yes, it did.

THE COURT: Did the subpoena issue?

THE WITNESS: We have no way of knowing. All we know is that the information never came through. I don't know at what time Mr. Graber decided he could not go ahead with the

Prenovost - cross

promise we had made.

THE COURT: Was anything else asked of Mr. Graber concerning Champion or Galanis?

THE WITNESS: Not that I can recall, sir.

THE COURT: When Mr. Gendron returned, then, he did have the three items you told us about?

THE WITNESS: Correct, sir.

THE COURT: And did he then report to you that Mr. Graber was unwilling to give more information?

THE WITNESS: No, sir. He reported that Mr. Graber had taken steps to procure further information from the Irving Trust Company regarding the Woodruff and Company account and that we would be getting it, within a reasonable time.

THE COURT: When Mr. Gendron returned from his December, '73 visit with Mr. Graber, after he had told you everything that happened at that meeting, both what you did get and what you expected to get, did you at that time have any reason to think that the U. S. would not cooperate with you in connection with Mr. Galanis?

THE WITNESS: No, we had no reason to believe that the U. S. would not cooperate at that time.

THE COURT: When after that was the first time you got any indication that the U. S. would not cooperate?

THE WITNESS: It was when the information that Mr.

Prenovost - cross

Graber had promised was not forthcoming, and I asked Mr. Gendron to get in touch with Mr. Graber to see what was taking place, what was happening.

THE COURT: Did he do that?

THE WITNESS: He did.

THE COURT: How did he do that?

THE WITNESS: I believe he called Mr. Graber.

THE COURT: This was in early '74?

THE WITNESS: I would imagine.

THE COURT: At that time is when Mr. Graber indicated there will not be --

THE WITNESS: There was some agreement and that, unfortunately, he was not able to deliver what he had promised.

THE COURT: After that conversation, did you initiate any further request to U. S. officials for information?

THE WITNESS: No, sir.

THE COURT: All right.

BY MR. GRAND:

Q Did you invite Mr. Green to come to Canada?

A If I recall, Mr. Green invited himself.

Q Did you, sir, prepare a memorandum at the time you requested the information from Mr. Graber that you testified about?

A No, sir.

Prenovost - cross

Q You testified, I believe, a few moments ago in response to a question by Judge Newman, that prior to December, 1973, you did not recall making any request to the U. S. for information, is that correct?

A That's correct.

Q I assume by that that you might have made such a request, but you don't recall any?

A It just means what I said. I don't recall.

Q You don't recall whether you did or you didn't make such a request?

A I don't recall that I did make a request, so there's more chances that I did not make a request.

Q Do you know, sir, whether or not Mr. Graber -- I'm sorry -- Mr. Gendron made any trips to the United States in connection with this matter, other than the December, '73 trip?

A No, sir.

Q No, you don't know?

A To my knowledge, the only trip he made to the United States was in December, 1973, to New York to see Mr. Graber.

Q Now, when -- withdrawn.

You know a Mr. Gaby LaPointe, do you not?

A Yes, sir.

Q He has been appointed Special Crown Prosecutor in this matter?

Prenovost - cross

A Yes.

Q When did he first start acting in this matter?

A I would guess 1972.

Q Did others from his office also work on this matter with him, other law partners or associates, or what we call parallel assistants in this country, to your knowledge?

A To my knowledge, the only time when someone other than Mr. LaPointe from his office was involved was in the transmission of the extradition request.

Q That Messr. Talbot?

A Yes, sir.

Q Do you know whether he participated at all in the investigative stage?

A No, he was never involved in any part of the investigative stage.

Q Can you tell us whether Mr. LaPointe, the Special Prosecutor in this matter, had any contact from 1971 to 1976 with any official of the United States Government or any employee of the United States Government?

A I don't believe so, but it's not impossible. I don't know. I don't believe so. He -- I don't remember him telling me that he had contacted --

Q I gather that you don't know one way or another?

A Could be. He could have telephoned without my

Prenovost - cross

knowledge.

Q You referred earlier, sir, to some information from Switzerland in October of '73. Did you go to Switzerland?

A Yes, sir.

Q Who else went with you?

A Gaby LaPointe.

Q Anyone else?

A No, sir.

Q Did you interview various people in Switzerland?

A We interviewed one person, sir.

Q Mr. Arnold, Theodore Arnold?

A Correct, sir.

Q Did you have any discussions at any time during the course of your investigation with any representative of the U. S. Government about Mr. Arnold?

A In Switzerland?

Q No. At any time in the course of your investigation from 1971 to 19 -- let's extend it from 1971 to 1976 -- did you have any discussions with any representative of the U. S. Government concerning Mr. Arnold?

A No, sir.

Q Do you know, sir, whether Mr. Arnold at the time you spoke to him, interviewed him, if you will, in Switzerland, had been in contact with an official or employee of the U. S.

Prenovost - cross

Government?

A I have no idea.

Q Did you in Switzerland interview or interrogate Mr. James Khawly?

A No, sir.

Q I gather that you have no knowledge as to -- I will withdraw that.

You testified earlier that the information concerning Agawan, or however you pronounced it, came from a broker in New York by the name of --

A I believe it's P. J. Stanton, I believe.

Q You also testified, I believe, that the other information you requested came, to your knowledge, from telephone calls that Mr. Graber made?

A Yes, sir.

Q Do you know to whom he spoke?

A No, sir.

Q I gather also you are unaware of what information Mr. Graber was in possession of when he spoke with and -- when he spoke with Mr. Gendron and sought to get data and information from him?

A No, sir.

Q No, you're unaware of what information Mr. Graber possessed at the time?

Prenovost - cross

A That's correct, I am unaware what information he might have had at the time.

Q You're unaware of the source --

A Except that Mr. Gendron reported to me that Mr. Graber had never heard of the Galanis or Champion Savings case.

Q You mean that's what Gendron told you Graber said to him?

A Yes, sir.

Q Whether or not it's true, in fact, you have no idea?

A That's correct.

Q Can you tell me, sir, how many people at the Department of Cooperatives, Corporations and Financial Institutions report to you concerning investigations they are conducting?

A There are 65 people on the staff, and I would say roughly one-third are in the investigation section, so maybe 20.

Q Approximately 20 people?

A Involved in investigations.

Q On an ongoing, continuing basis?

A Yes, sir.

Q That was the case from 1971 through 1973?

A Well, we might have been maybe 50 in 1972 and gradually up to 65.

Q So the number varied between 15 and 20?

A Roughly, that would be the --

Prenovost - cross

Q Are you aware, sir, of any meetings between the Minister of Justice of Canada and representatives of Champion Savings?

A Minister of Justice of Canada?

Q Of Quebec.

A And representatives?

Q Of Champion.

A I cannot recall.

Q Specifically, Mr. Pierre Bourque for Champion meeting with the Minister of Justice of Quebec?

A Mr. Pierre Bourque was employed to represent --

Q He was counsel to the trustee.

A He was counsel to the trustee.

Q Of Champion?

A Yes. Whether he met with the Ministers of Justice of Quebec, I don't know.

MR. GRAND: That's all.

MR. SWEIGART: I have nothing further.

THE COURT: Is this your only Canadian witness?

MR. SWEIGART: I have one further, but, however, his testimony does not deal particularly with this present pending motion. We had a discussion at our last session concerning the appropriateness of the diplomatic seal that was put on the evidence admitted, and I have a Canadian lawyer who is competent

Prenovost - cross

to testify as to the legal authenticity of the documents that were presented in evidence.

MR. GRAND: Might I make a suggestion on that subject? I had a very clear understanding of what today was going to be, and that was motions. We will have Canadian lawyer here on Monday, also. It seems to me that the merits of the matter on the hearing itself should take place as scheduled on Monday. I am sorry that the man has come down today, but today's subject was not authentication of documents.

THE COURT: I don't know how much time we are going to have, since when we break right now, I am not going to be able to resume until 3:30.

MR. GRAND: That answers the question.

THE COURT: If it's brief testimony and we can take it at the end of the day, I will endeavor to take it.

MR. GRAND: My problem would be that the expert you will have me cross-examine will not be here -- my expert who would help me cross-examine would not be here until Monday. I can't profess expertise on Canadian law.

THE COURT: Let's see if that problem arises.

This witness is excused, is that correct?

MR. SWEIGART: That's correct.

MR. GRAND: Yes.

THE COURT: Thank you for your testimony. I want

Prenovost - cross

2 to say to you, sir, undoubtedly, you realize that testimony of
3 the sort presented by you would normally not be needed in an
4 extradition proceeding, but as I gather you have become aware,
5 there is an issue in this case whether actions of the executive
6 branch of the U. S. Government make it inappropriate for a
7 U. S. Court to take the steps normally expected in connection
8 with extradition, and so that matter needs to be explored
9 because our courts have to be sure that our government has acted
10 within the laws that govern it. So that's the reason you have
11 been inconvenienced. I am sorry that has occurred, but I hope
12 you understand why it was necessary.

13 THE WITNESS: Certainly.

14 (Witness excused.)

15 (Recess taken.)
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25

AFTERNOON SESSION

1
2 L E S T E R G R E E N, called as a witness,
3 having first been duly sworn by the Clerk of the Court,
4 was examined and testified as follows:

5 THE CLERK: State your name for the record.

6 THE WITNESS: Lester Green.

7 DIRECT EXAMINATION

8 BY MR. SWEIGART:

9 Q Would you state your occupation, please?

10 A I am special counsel with the Securities and Exchange
11 Commission in Washington.12 Q How long have you been employed by the Securities and
13 Exchange Commission?

14 A Since 1967.

15 Q What are the scope of your duties with the Securities
16 and Exchange Commission?17 A Since 1969, I have been employed by the Division of
18 Enforcement, which is to investigate and try matters involving
19 violation of the federal securities laws.20 Q In the scope of those duties and in that capacity, did
21 there come a time when you investigated the activities of one
22 John Peter Galanis?

23 A Yes, there did.

24 Q During the course of your investigation of Mr. Galanis,
25 did there come a time when you were contacted by the United

Green - direct

States Attorneys office for the Southern District of New York concerning Mr. Galanis?

A Yes, I was contacted. If you want me to explain, I can tell you --

Q Who were you contacted by?

A By Assistant United States Attorney Daniel Sullivan.

Q When did this occur?

A We were investigating Mr. Galanis --

MR. GRAND: I believe the question was when. I object.

A The contact, to the best of my recollection, was in April, 1971.

Q Could you explain the basis of that contact and what the result of that contact was?

A Yes.

MR. GRAND: I object. I don't see what that has to do with anything.

MR. SWEIGART: I didn't hear you.

MR. GRAND: I don't see what the relevance is.

MR. SWEIGART: I think the basis -- the relevance, your Honor, is that he was contacted concerning John Peter Galanis and his investigation of John Peter Galanis, and that is certainly relevant to the matter that is presently before the Court. The question is concerning how this contact is related

1 Green - direct
2 to John Peter Galanis and just exactly what the story was.

3 MR. GRAND: All this can possibly do is elicit hearsay
4 between the U. S. Attorney and Mr. Green, some four months before
5 Mr. Green met Mr. Galanis.

6 MR. SWEIGART: I think it was indicated --

7 THE COURT: Has he testified when he met him?

8 MR. SWEIGART: He indicated that he had -- it was in
9 the course of his investigation of John Peter Galanis there came
10 a time in April when he was -- I'm sorry, I forgot the exact
11 year.

12 THE WITNESS: April, '71. 1971.

13 THE COURT: I can't tell whether it will advance the
14 inquiry very much, but I don't see any prejudice to him telling
15 us when he heard from the Southern District, and what it was all
16 about. Go ahead.

17 A I was assigned to investigate matters involving Mr.
18 Galanis in August of 1970. We had an order of investigation
19 into a stock which was being manipulated. During the course of
20 that investigation --

21 MR. GRAND: I object to this. If this is permitted,
22 we are going to get more of this kind of conclusory testimony
23 by Mr. Green. That doesn't prejudice me now, but I am fearful
24 as to what next will come if he is permitted to sit up there and
25 say he was investigating a company -- I don't think this is

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relevant to this proceeding.

THE COURT: I am going to let him continue. Obviously, if we reach the point where he is unnecessarily detailing some allegations that don't concern us, the matter can be restricted, but this whole relationship between the assistants, the U. S. Attorney's office in New York, the SEC and potentially Canada is what this hearing is about, so I can't foreclose one avenue of developing that relationship.

A Mr. Galanis was the subject matter of our investigation. He was in the order for investigation. In August, we started, at least I was involved in the investigation. It went on for about six months, where we were seeing whether he was -- he had violated the federal securities laws.

As I testified before, I believe it was in April that either I or my superior, Mr. Borowski, received a phone call from Daniel Sullivan in Washington concerning Mr. Galanis and his involvement in a case entitled: Arnold Wilkins, which had to do with the destruction of documents.

I can tell you what the conversation was, if you would like me to do so.

Q The specific information I am interested in eliciting at this time is how the relationship between your office and the U. S. Attorney's office for the Southern District of New York began with respect to the investigation of John Peter

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Galanis.

A Well, from what I understood from my discussions with Mr. Sullivan and Mr. Borowski, Mr. Galanis was being investigated by the Assistant U. S. Attorney in New York in the Arnold Wilkins case, and there was a question whether he would be indicted or named as a coconspirator in the action.

Apparently Mr. Grand, who was his lawyer at that time, had intervened and had contacted Mr. Sullivan and indicated that the SEC, as well, was investigating Mr. Galanis' activities and that possibly some package arrangement could be worked out between the SEC and the U. S. Attorney's office to terminate Mr. Galanis' involvement with the U. S. Government and its investigative arms.

Q Was there an agreement reached between the U. S. Attorney's office, the Securities and Exchange Commission and Mr. Galanis and his attorney concerning his involvement in these investigations?

A Yes, there was an agreement, and I was privy to it.

Q Could you explain what that actual agreement was that was reached at that time?

A Yes, I can.

MR. GRAND: Before we get to that, your Honor, can we get the date, who was present, what was said to whom? All he said is he was privy to it. What is the basis for his being privy to it?

Green - direct

Q Can you tell the Court when you first attended a meeting with the Assistant U. S. Attorneys in the Southern District of New York and Mr. Galanis and his counsel? Could you tell us when that meeting took place?

A To my best recollection, it occurred in April or May of 1971 in Mr. Sullivan's office in New York City.

Q Could you tell us who was present at that meeting?

A Yes. Daniel Sullivan, the Assistant U. S. Attorney, Mr. Grand, myself, Mr. Borowski. I don't recall whether Mr. Galanis was in the room initially. I think a lot of the discussion was done outside of his presence.

Q As a result of this meeting, was an agreement reached between the U. S. Attorney's office, the Securities and Exchange Commission and Mr. Galanis and his attorneys?

A The answer is there was.

Q Could you tell us what that agreement was?

A In May of 1971, it was agreed --

THE COURT: Is this an agreement made at this meeting?

THE WITNESS: Yes, sir. It was made, and it was an oral agreement in May of 1971, because we were investigating Mr. Galanis as well as the U. S. Attorney's office.

It was agreed that Mr. Galanis would plead to two counts of two separate indictments, I believe. That his total fines would be, I believe, the \$20,000 imposed by the law, that

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2 this particular package would not include his tax involvement
3 with the U. S. Government, and federal problems with the Internal
4 Revenue Service, and that he would also consent to an injunction
5 which we felt would be filed later concerning his involvement in
6 the Everest matter which involved his American course of
7 conduct. That he would tell the truth, and if he didn't tell
8 the truth, at that time, that the deal would be off, and that he
9 would be -- would not commit any more crimes from this point on.

10 We had sort of a joke at that time that he would be on
11 the road to Damascus, and that's the terminology that we used.

12 Q Now, was it also your understanding, therefore, that
13 Mr. Galanis would become a witness for the U. S. Government?

14 A And that he would cooperate with the U. S. Government
15 in the cases that we sought to bring in connection with the
16 information that he gave us.

17 Q Did you thereafter debrief Mr. Galanis in furtherance
18 of this investigation?

19 A I debriefed him on numerous occasions. Initially, I
20 debriefed him with others, and everything I got from him I put
21 down in note form, which I have copies of.

22 Q Who was responsible, besides yourself, for this debrief-
23 ing?

24 A Well, it started out as a -- excuse me. I left out
25 one other matter about the agreement. I believe that Mr. Galanis

Green - direct

would not be indicted in the Arnold Wilkins case, that he be named as a coconspirator. That sticks in my mind as having occurred at that time.

All right. With regard to the debriefing, I was representing the SEC at the time, and I was acting with my superior, Irwin Borowski, and Arne Rode.

We were taking notes of what Mr. Galanis had told us so that we would get some parameters of how his testimony would fit into the evidence that we had obtained up to this date.

Q In the course of this debriefing, did Mr. Galanis --

MR. GRAND: Can we have a date for this debriefing?

THE WITNESS: Yes, I can give you the dates. We met in Washington in July. I have the notes here which I brought. Met in July in Washington, and I believe it was Mr. Grand with Mr. Galanis, myself, Mr. Rode and Mr. Borowski. My recollection is it was a two-day meeting, and I took about -- we all took about 50 pages of notes.

The second debriefing, I believe, was in September of 1971, and I believe at that time it was myself and Irwin Borowski. My recollection is it was in New York. And the third time I believe it was in late September, which occurred also in New York. I know I was there, and I don't have a recollection now without seeing my notes who else was present.

Q In the course of this debriefing, did Mr. Galanis

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discuss with you his involvement with Champion Savings Corporation in Canada?

A As my notes of July, 1971 will indicate, the first question that I asked Mr. Galanis -- and this was the first contact I had with him concerning his matters -- "Mr. Galanis, what are you doing now?"

And he said, "I am associated with Adanac, which I believe is a mutual fund, and also Champion Savings."

Exactly what he told me is on the first paragraph of the first page, and that's my recollection, and that's accurate.

Q Would you like to refer to those notes in order to refresh your memory as to the specific content of that question and answer?

A I think they speak for themselves. My recollection is exactly what would be there, those are the notes, and I could identify them for you.

MR. SWEIGART: We have one difficulty with producing these notes in that they contain a certain amount of information that was obtained from Mr. Galanis that relates to other investigations and other people who were under investigation who were perhaps not charged, and some of it is privileged and confidential, and the SEC would like to maintain its privilege over that. There was a portion of these notes that were

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originally produced at the time of certain trials in which Mr. Galanis was a witness. The Judge at that time expurgated certain portions of it. I believe Mr. Grand is familiar with those notes, the expurgated version of those notes.

MR. GRAND: I was shown them a few minutes ago.

MR. LAPRADE: Robert M. LaPrade. I am an attorney with Securities and Exchange Commission in Washington, D.C.

The problem we have is that paragraph that Mr. Green relates to in these notes was made public in the civil action, but the copy of the document that was made public is not too legible. I have a copy which parts of were not made public, and I would have no objection to that page being introduced if it were agreed upon by all counsel here that the rest of the document which contains parts that Chief Judge Edelstein had kept out of the public domain, because it either related to other parties who might be maligned by statements that Mr. Galanis had made which hadn't been proven, such as he referred to a Congressman who received some payments -- I have no objection to ripping off the top notes of the unexpurgated version and putting those in the record, if it's agreeable to counsel.

MR. GRAND: I think any part of the notes is irrelevant to this proceeding on a number of grounds. I assume that Mr. Green is going to testify that he made no disclosures to the Canadian Government, and, therefore, whatever was told to him

Green - direct

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2 didn't go beyond him. So that, at a minimum, until he testifies
3 to the contrary, the contents of these notes are irrelevant.

4 Beyond that, I think they are also irrelevant because
5 unless Mr. Green is in a position to testify that any of the
6 other people or all of the other people with whom Mr. Galanis
7 spoke in the course of the next three to five years gave informa-
8 tion to the Canadians, the fact that he had certain informatio
9 and not other information is not dispositive of anything.

10 I object to any portion of these notes coming into
11 evidence.

12 THE COURT: It's not clear what the government is
13 endeavoring to prove. Are you offering the witness' notes?

14 MR. SWEIGART: First, we were going to prepare to offer
15 the witness' notes to indicate what information John Peter
16 Galanis had given to him concerning his involvement, what
17 information he had given to the U. S. Government in this case with
18 regards to his involvement with Champion Savings Corporation in
19 Canada at the specific time of this first debriefing period.

20 MR. GRAND: Further object that anything disclosed
21 here runs the risk of being disclosed to the Canadians.

22 MR. SWEIGART: I think perhaps it would be easier at
23 this time not to -- I won't proceed to offer it, and we will
24 pass that point, and if it becomes necessary at a later time, I
25 shall endeavor at that time to move it into evidence. We can

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proceed at this point without it.

BY MR. SWEIGART:

Q Mr. Green, you indicated in this first debriefing period you did discuss with Mr. Galanis his involvement with Champion Savings Corporation in Canada, is that correct?

A Not his involvement. I just asked him what he was doing now, and he said he was associated with Champion, and that was the extent of it. He told me it was through Jose Pelayo, who was his nominee, and his wife. That was the extent of my inquiry. This occurred in July of 1971.

Q Thereafter, in the course of your investigation and debriefing of Mr. Galanis, did you have further occasion to discuss his involvement with Champion Savings Corporation?

A The answer is I did not until I became aware of some matter which involved him sometime in the late 1972, because I was not aware of any problems that existed with regard to Champion.

Q Do I understand you to say that something occurred which caused you to inquire further?

A Well, I didn't make any inquiry at all. I found out something in 1972 which caused me to inquire as to what was going on.

Q Could you tell the Court what it was that came to your attention?

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2 A Yes. There were some people from Canada who had come
3 down to the Securities and Exchange Commission in Washington.
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5 I would like to emphasize that during this period of
6 time, I was debriefing --
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MR. GRAND: A little slower, please.

8 A It occurred in 1972. During this period of time, from
9 the July minutes up until this point in 1972, there had been
10 a criminal reference by the Securities and Exchange Commission
11 concerning the conduct which Mr. Galanis and others were
12 involved in. We made a reference to the U. S. Attorney's office.
13 I was asked to be the SEC's representative to assist the U. S.
14 Attorney's office in New York, and I did that for five years
15 subsequent to the referral. The referral occurred in November
16 of 1971 when the Everest action was filed.

17 Sometime in 1972 when I was back in Washington and
18 I had debriefed Mr. Galanis, and we were preparing for trial
19 and indictments, et cetera, up until that time, I was called
20 into the front office, and there were Canadians had come down in
21 connection with a totally unrelated matter, and this is my
22 recollection -- however, they had indicated to my superior that
23 they wanted to know if we were familiar with John Peter Galanis,
24 and I said -- I was called up front to the office, and my
25 superior asked me this. I don't recall whether it was Stanley
Sporkin or Irwin Borowski. Irwin knew. I was familiar with John

Green - direct

Galanis, and I said I had been. He said these Canadians were interested in any information that was available in connection with Galanis, because he was under investigation up in Canada.

And I immediately understood the problem that would exist by virtue of the fact that I was debriefing Mr. Galanis, and I didn't want to get involved with the Canadians and their action, because Mr. Galanis was cooperating with me, and representing the U. S. Government and the U. S. Attorney's office.

I told my superior that I felt it would be ethically improper for me to get involved with that situation, and I backed away.

However, my boss told me that if they wanted any public documents, records of public corporations, that I should be courteous to the Canadians and provide this material to them.

I asked the Canadians what they wanted, and they said they were interested in public documents of certain corporations which were traded in this country, the names of which I don't recall.

The only assistance I provided them was I called down to the file room and asked for the public documents, which we call the -1 and -2 documents, to be brought up and put them in a room and I left them, and I did not divulge anything that Mr. Galanis had told me or furnish any documents which Mr. Galanis

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Green - direct

had given me to the Canadian representatives.

Q As a result of your discovering that Mr. Galanis was under investigation in Canada, did you have further chance to discuss this with Mr. Galanis?

A Being curious as to what was going on, my recollection -- and this is prior to Hagopian indictment where Mr. Galanis was cooperating in connection with that matter -- I had a meeting with Mr. Galanis, I think up in Paul Grand's office in New York, and in the course of my getting information concerning Mr. Hagopian, in the middle I asked him was there any problem that he had with something called B.W.C., or something to do with the Canadians, and he indicated to me that there was some matter that was pending involving Bank Weidman and Zev Dichne, and a fellow by the name of Ted Arnold, which had to do with Champion Savings.

He told me that peripherally, and I didn't go into that further and tell him anything about the fact that the Canadians were investigating him.

Q Did you, during the course of this investigation, obtain further information from Mr. Galanis concerning his involvement with Champion Savings Corporation in Canada?

A Receive information from him or ask him for information?

Q Yes.

MR. GRAND: I didn't hear that.

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MR. SWEIGART: He asked me a question.

MR. GRAND: I didn't hear it.

MR. SWEIGART: He wanted to know --

THE WITNESS: I wanted to know in connection with what he was asking me, in connection with what.

MR. SWEIGART: I think it's best if I restart that question.

Q Any other time during the course of your investigation did you have occasion to question Mr. Galanis concerning his involvement with the Champion Savings Corporation?

A I didn't question him about the substance of what occurred in Canada, but there was two things that occurred in 1973 which I became aware of. I placed this between February of 1973 and sometime like May of 1973 is when we went to trial in the Persky case.

Number one, I believe there was an approach made by the Swiss Government to speak to Mr. Galanis concerning Bank Weidman, and apparently Bank Weidman went into financial difficulty, and I believe that Mr. Grand had come to the office to discuss this matter with Mr. Brodsky. I don't recall whether Mr. Galanis was there or not. And the outcome of that, as I recall, is that Mr. Galanis would not speak to the Swiss concerning this matter.

The second time I remember something occurring was

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when it was -- either before the Hagopian trial, just before everybody pled, or possibly before the Persky case went to trial in May, where defense counsel had served notice to us, or we had learned that an indictment had been issued against Mr. Galanis, I think in February of 1973, charging him with violations in Canada, which is a subject of this extradition.

At that time, it became a question, which Mr. Brodsky was concerned about, as to what Mr. Galanis would say if he were questioned by the opposition about his Canadian affairs, and whether he would take the Fifth Amendment or not.

Q To your knowledge, did any other information from John Peter Galanis regarding the Champion Savings Corporation come into the possession of the Securities and Exchange Commission or the U. S. Department of Justice?

A Well, you say come into possession. It didn't come into the possession of the SEC or the Justice Department by virtue of Mr. Galanis. I was investigating during this period of time a company by the name of Northern Corporation --

MR. GRAND: By the name of what?

A Northern Corporation -- Cable Information Systems, which companies Mr. Galanis had had some association. We were -- this was a subject of a grand jury investigation in 1975. I had been aware from the registration statements that were filed with the Commission that certain loans had been made by a

Green - direct

bank, which I learned to be Champion Savings, to these two entities in the U. S. and I was interested in getting the information concerning those two companies and its principal.

Q I will return to that a little bit later.

Specifically when you discovered that there was an indictment or a charge against Mr. Galanis in Canada, did you question Mr. Galanis concerning this indictment or charge?

A We asked him about the indictment and I believe what happened at the trial, the Persky trial, is that he indicated that he was not guilty of the charges that were alleged in the complaint. We never went into the substance of the charges with Mr. Galanis, because it was a Canadian affair.

Q Was a specific decision made not to provide any assistance or information to the Canadian government which had been provided to you by Mr. Galanis concerning the subject matter of the Champion Savings Corporation?

A Yes. That was a decision that was made when the Canadians first came down, as I described to you before, Mr. LaTour and Mr. Draupeau. I had that discussion with my superiors. My recollection is that I discussed it with the Assistant U. S. Attorney, and I worked with five of them during the course of five years that we worked. Every assistant that I worked with, I told them I was not going to get involved in the matter, and I told Mr. Galanis that -- the same thing on more than

Green - direct

one occasion.

Q Did you at any time provide any information or assistance to the Canadians with respect to the information you had obtained from Mr. Galanis?

A Never.

Q Now, was a Mr. Graber of the Securities and Exchange Commission, New York office, involved in any way with your investigation of John Peter Galanis?

A No.

Q Did you ever have any conversation with Mr. Graber in or around December of 1973 concerning Mr. Galanis?

A Yes, I did.

Q Did you at any time provide any information which you received from Mr. Galanis to Mr. Graber?

A No.

Q What was the actual substance of that conversation?

A Well, I would like to preface this -- I can answer the question, but I have subsequently become aware of handwritten notes which involve this. The substance of the conversation was that I was in New York, and this is the best of my recollection, in December of 1973, working on these criminal cases.

I received a call from Jake Graber telling me that two Canadian officials had come to New York and were seeking information concerning Mr. Galanis and his affairs with Champion Savings,

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and that he knew from the prior Everest case, the scuttlebutt in the office that I worked with Mr. Galanis in the past over at the U. S. Attorney's office, and also investigated his affairs, so he called me, and told me about this, and wanted to know if I was in a position to furnish any information for the Canadians, and I explained to him that I would not do it, that anything that he was doing with the Canadians is going to be done without any assistance from me, from the Department of Justice, and I reported this to Mr. Frank Velie, who had now succeeded to Mr. Brodsky's role as assistant in charge of Mr. Galanis' affairs. Mr. Brodsky had left the government, I believe, in August or September of 1973, and in connection with the conversation, I was served with a subpoena by Mr. Grant to the SEC, and I went through the documents the other day and came across some handwritten notes, and a memo prepared by Mr. Graber.

The handwritten notes indicates --

MR. GRAND: I object to what notes were in the SEC file not written by this man, can't refresh his recollection.

THE COURT: Are you endeavoring to elicit that?

MR. SWEIGART: No, I wasn't. We can pass that over at this time.

Q Mr. Green, did you ever see a letter from Mr. Grand objecting to the New York office of the Securities and Exchange Commission providing information to the Canadians concerning Mr.

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Galanis?

A I saw the letter on two occasions, two different copies, and I believe I was privy to certain conversations involving the letter.

Q Was there any action taken by you as a result of that letter?

A Yes. I had a conversation with Mr. Velie. Mr. Velie said he wasn't --

MR. GRAND: I object, your Honor.

Q Would you first tell us -- I'm sorry, I don't recall who Mr. Velie is.

A I had maybe two or three conversations concerning the substance of Mr. Grand's letter, and I recall precisely how I received the letter or became aware of a letter.

Q Could you tell us how you did become aware of that letter?

A Okay.

MR. GRAND: Your Honor, we are getting into hearsay and irrelevance.

THE COURT: Again, it's hard to know whether it's going to turn out to be irrelevant or not. It's hard to see how a letter from Mr. Galanis' counsel to the SEC could have nothing to do with why we are here.

MR. SWEIGART: I think it's important to note, your

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Honor, that letter was put into evidence this morning by Mr. Grand.

THE COURT: Then, you can --

MR. SWEIGART: I believe it's Exhibit 206.

THE COURT: All right. Go ahead.

A I had two conversations, or possibly three. The first was with Mr. Velie. A letter came in, and I believe I was in the office when he received a call from Mr. Grand, where Mr. Grand was objecting to the fact that the SEC across the street from the U. S. Attorney's office was inquiring into Mr. Galanis' affairs in Canada.

I believe Mr. Velie's conversation with me was that we had not given anything to Canada, and he is not going to respond to it, and nothing was done that was improper.

Second time I saw it is when Don Malawsky, who was the then, I think -- the assistant regional administrator of the New York Regional Office of the SEC --

MR. GRAND: Before we go further, I move to strike that conversation, because now we have testimony of Frank Velie, with whom no communication was made, and I believe that's improper.

THE COURT: I thought he said that's what he told Velie.

THE WITNESS: No, sir. No written response was

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required.

MR. GRAND: I believe he said that's what Velie said.

THE WITNESS: To me, that's my recollection.

MR. GRAND: I move to strike.

THE WITNESS: Velie told me that.

THE COURT: Well, again, I am not certain that can't come in to this. His answer may stand.

A The second time I saw the letter was in a different vein. There was a copy, I believe, sent to the Securities and Exchange Commission -- actually, it was a letter to J. Graber, I believe that's what it was, a copy was sent to Frank Velie, and I remember a telephone conversation between Mr. Velie and Mr. Grand involving it.

The second situation was a copy was sent to Don Malawsky and I became aware of that copy because it was forwarded over to Rusty Wing, who is chief of the Criminal Section over at the U. S. Attorney's office.

Attached to that letter was a copy of J. Graber's letter, not the handwritten one, but a typed one. I think another document -- which I can't recall at this time.

I believe I had a conversation with either Malawsky or another gentleman at the SEC where they said: "What's going on here? What shall we do in connection with this demand made by Paul Grand?"

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THE COURT: What was the demand?

THE WITNESS: He wrote this letter which indicated that the SEC had a -- the U. S. Attorney's Office had a deal with Galanis, and the letter speaks for itself, your Honor. My recollection is that he said that assisting the Canadians was in' -- in some way improper under the Securities Laws of 1934.

THE COURT: What do you think was the demand?

THE WITNESS: That demand was to stop. That's a demand.

Q Do I understand, then, an inquiry was directed to you concerning what should be done with regards to this letter or with regards to the demands made in the letter?

A Well -- yes. The people from the SEC had told me that they got this letter and they wanted to know what it was all about.

Q Did you explain that to them --

A I didn't know, except what I heard from Velie, and I knew about the arrangement with John Galanis. I told them that I wasn't involved in it, that I hadn't given anything to Mr. Graber, and I would suggest he back away from the whole deal and don't give any information up in any way.

Q You advised the New York office of the SEC not to cooperate with the Canadians?

A I told them not to give up any documents that were

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forthcoming.

THE COURT: Who did you tell that to?

THE WITNESS: My recollection is that I spoke to either Mr. Malawsky or Mr. Jacobs concerning certain documents that were due in to be sent to the Canadians later on after they left. That was after Mr. Grand's letter, I believe, of the 18th of Dec-ember.

Q Thereafter, did you continue to debrief Mr. Galanis?

A The answer is yes.

Q Who were you working with at this time?

THE COURT: Maybe I better clear that up. You now said something about some documents that were due to be sent the Canadians?

THE WITNESS: Apparently the Canadians had not received all of the documents which they had requested of Mr. Graber, and I think this is in Mr. Graber's memo which we have turned over to the other side. This memo which Mr. Graber typed of his entire contact with the Canadian officials dated December 14, 1973, I think.

Q After this time, did you continue to debrief Mr. Galanis?

A Yes.

Q Who were you working with at this time?

A This time being December, 1973, Frank Velie got off

Green - direct

the case. Jim Neslin was involved. Bob Walton. Then after, it was Jack Lowe --

A Jim Neslin was involved. Bob Walton. Then, after it was Jack Lowe --

Q During this period of time, which would be 1973, and shall we include 1974 and 1975, did you furnish any information to the Canadian officials concerning John Peter Galanis?

A The answer is no.

Q Did you have any occasion during this time to meet with any Canadian officials?

A In 1975, I did. The answer is yes.

Q Could you tell us when this meeting took place?

A I went up to Canada in July of 1975, Montreal.

Q What was the purpose of the meeting?

We had a grand jury investigation concerning the matter that I discussed previously, Northern Corporation and Cable Information, because of the -- we felt there was a manipulation in that matter. I had become aware from the registration statements and also from our inquiry that there had been 200,000 or more transfers from Champion to two companies controlled by an individual who controlled Northern and Cable.

I wanted to -- also, I became aware that certain transactions, trades, I believe, occurred through Canada. As part of the investigation that I was doing with the New

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York U. S. Attorney's office, which we had before the grand jury in the summer of 1975, I was interested in knowing what happened to those moneys that went into Northern Corporation, and I believe a company called Burying Hill.

Q Now, could you tell us who you met with in Canada?

A There was one other matter. You asked me what I was up there -- I went up also on two other unrelated matters which took up the -- as it turned out -- took up the bulk of my time.

Q Could you indicate to us, then, who you did meet with in Canada?

A My recollection is that I went up to Canada on the 16th and I came in late, so the first day I met nobody except Mr. LaTour, who met me at the office.

The next morning was the first time I had any substantive meetings. I went to the Quebec Securities Commission offices, and I believe I met with Mr. Prenovost, Mr. Rozon and Mr. LaTour was in the office, and then later Mr. LaPointe came in. But I was not in the office the entire time. I was in the back room, in the back office with Mr. LaTour, talking about how we were going to take care of this other matter that was unrelated. It was going to a bank -- finally --

Q During the course of that meeting, did you discuss Mr. Galanis and Champion Savings Corporation with the Canadian officials?

Green - direct

A I was up -- I asked them if they had any information concerning Northern or Cable disbursements of funds from Champion Savings, because of our grand jury investigation, because we wanted to know the source of the moneys and what was the circumstances behind them.

Q Did they provide you with the information you requested?

A At that point, Mr. -- I think his name was LaPointe -- that the gentleman's name? He is the one handling the criminal end of the case -- said that he felt that since Mr. Galanis was cooperating with the U. S. Government, and that he was a target of their investigation, that we would not exchange any information, we would drop the subject immediately, at which time I agreed.

We discussed nothing and closed it out in one minute. Mr. LaPointe did not come to the meeting until half hour after I was in the office.

Q Is it true, therefore, that you were involved with the investigation of Mr. Galanis from, shall we say -- I'm sorry, I'm trying to get the date straight in my mind. You said early 1971?

A First dealt with Mr. Galanis in August of 1970 in a case called Health Evaluation. That was an SEC investigation. I was called into that. From that point on, the SEC investigated it up until the contact around April, 1971 by Assistant U. S.

Green - direct

Attorney Sullivan.

We had our own investigation going separate and apart from the Arnold Wilkens case that was going on by the U. S. Attorney in New York.

Q Thereafter, would it be fair to characterize it as combining forces with the U. S. Attorney's office in the Southern District of New York? Thereafter, were you specifically concerned with the John Peter Galanis investigation up until the present time?

A Well, I have taken myself off that investigation about a year ago for other matters involving Mr. Galanis. The answer is up until 1970 -- probably late 1975.

Q Do you know specifically --

A Early '76.

Q Do you know specifically when the investigation of Mr. Galanis, which took place along -- the investigation which you conducted a-long with the Southern District of New York, was there a particular cutoff point: that is, did it end?

A Yes. It commenced --

MR. GRAND: Can we know what investigation we are talking about? You're talking about "it", and I think he testified to any number of cases, investigations and indictments. I don't know what "it" refers to.

Q Specifically, you have indicated that you had a very

Green - direct

reaching investigation into Mr. Galanis, I believe, is that correct?

A Mr. Galanis was involved in activities in the United States, Canada and Switzerland, among other places. He was involved in numerous indictments. Our grand jury investigation concerning his cooperation extended from May of 1971, at least from my notes, up until -- the last case we had, from my knowledge, was the Erb case, which I think occurred in early 1976.

Q To your knowledge and your work with the U. S. Attorney's office in Southern District of New York with respect to Mr. Galanis' cooperation in these investigations, was a decision made that Mr. Galanis was no longer needed, that you were finished with him, as far as his cooperation and as far as his part in the investigation?

A The decision was made. We did not continue that investigation. I told you that I went up to Canada to look into -- because various factors -- and when, at that time, it was decided that his cooperation would no longer be necessary.

Q Could you tell us the date when that investigation and his cooperation ended?

A I believe that --

MR. GRAND: I object to characterization "cooperation ended". The testimony was his cooperation was no longer needed.

Green - direct

Q Could you tell when the decision was made that Mr. Galanis' cooperation was no longer needed and the investigations involving him were closed?

A I had a discussion with Jack Lowe, and my recollection is that there is letters which were addressed -- signed by Jack Lowe, which I have seen, which indicate that better than my recollection. There were two letters which went to the Justice Department in Washington.

Q Mr. Green, were you aware of all the information that Mr. Galanis gave to the U. S. Government, either the U. S. Attorney's office in the Southern District of New York or to the Securities and Exchange Commission, concerning his involvement with Champion Savings Corporation in Canada?

MR. GRAND: I object to that unless Mr. Green can testify that Mr. Galanis never gave any information to any Assistant U. S. Attorney or to any employee of the SEC, except in his presence.

THE COURT: I don't think it has to be quite so all or not. If he tells us what his role was in relation to informing himself about Mr. Galanis' information, I think that will advance the inquiry.

A As far as I know, I was the principal person from the SEC who was debriefing Mr. Galanis and working with the U. S. Attorney's office in the majority of cases that he was involved.

Green - direct

There were occasions where he was visited, I believe, at Danbury by some representatives of the SEC. I heard of that. On one occasion, he was debriefed. As a matter of fact, I might have even had a hand in arranging that debriefing. It was up in Connecticut. The other times -- there certainly have been occasions where Mr. Galanis has met with Assistant U. S. Attorneys without my being present in cases which I had nothing to do with, or possibly when I was out of town he might have met with them individually.

I would say in the vast majority of times, I was present and I was available, because I was the only person that had been a continuing force in these cases from 1971 to 1976, and they needed me for the notes and for my knowledge of his background, so -- and I have had 50 or more interviews with Mr. Galanis, I would estimate.

Q To your knowledge, was any information which was given to -- was given by Mr. Galanis to the United States Government concerning his involvement with Champion Savings Corporation ever given to Canadian officials?

MR. GRAND: So far as he knows.

A As far as I know, never, no.

MR. SWEIGART: I have no further questions.

Green - cross

CROSS-EXAMINATION

BY MR. GRAND:

Q Mr. Green, you commenced debriefing, as you put it, Mr. Galanis in July of 1971, is that correct?

A That's my recollection.

Q That debriefing session took some two days, correct?

A Yes.

Q That took place in Washington, D.C. at the offices of SEC with you, Mr. Borowski and Mr. Arnold Rode in attendance, and myself and Mr. Galanis?

A Correct.

Q During the course of those meetings in mid-July, 1971, do you recall my making a phone call, or more than one, to Mr. Sullivan in New York -- and let me see if I can refresh your recollection -- that the subject matter to be discussed was whether in light of the disclosures that were being made to the SEC, Mr. Sullivan and I would then have an agreement concerning Mr. Galanis' immunity and what he would plead to and that there was no agreement consummated until after we met at the SEC and had those debriefing sessions? Do you recall that?

A My recollection is that we had a meeting in May of 1971 in New York, and I was -- my recollection is that's when the agreement occurred.

Q Do you remember the agreement having anything to do with

Green - cross

the disclosures that were to be made by Galanis in July of '71?

A I don't know what disclosure you're talking about.

Q Do you have any recollection, sir, as to why, assuming, as you put it, a -- that you recall a meeting in April or May of '71, do you have a recollection as to why the debriefing did not take place until the middle of July?

A I am saying, my recollection is May of '71. If it happened in June, that's six years ago.

Q You may be wrong?

A I am not saying I am wrong, my best recollection is May of '71. It could have been a little later.

Q Could it have been in July, sir?

A That's when the first debriefing was. That's when my first notes -- July 13, my first notes that occurred.

Q I show you Mr. Brodsky's memorandum, Defendant's Exhibit 202, which states Galanis agreement as of July, 1971. Do you see that?

A I see it.

Q Does that refresh your recollection?

A No. My best recollection is I went to New York in May of '71, and Mr. Sullivan was there. Now, I do remember yellow sheets --

Q You answered the question. I asked you if it refreshed your recollection.

Green - cross

I believe you also testified you might be off by a month or so?

A There were --

Q Yes or no?

A The answer is my best recollection is May. If it were June, then I am off 30 days.

Q To your knowledge, sir, did Mr. Galanis during the course of the period from '71 to '75 meet with Assistant U. S. Attorneys, Sullivan, Brodsky, Tighe, Pfeffer, Walker, Sabetta, Velie, Lowe, Walton and others?

A That's correct.

Q Were you present at each and every one of those meetings?

A Most of them.

Q Were you present at each and every one of them?

A No.

Q To your knowledge, do you know whether Mr. Galanis spoke by telephone or with those U. S. Attorneys from time to time?

A I don't know whether he spoke to other U. S. Attorneys. I know he spoke by telephone to the ones you named.

Q Do you know the names of the people from the New York regional office of the SEC who went to visit Mr. Galanis at Danbury?

A I believe it was Toscano, Larry, Toscano, and

Green - cross

possibly Mr. Lanzotti.

Q Are those the names?

A I believe so, but there is documentation which indicates who they were.

Q Now --

A It's available.

Q I gather you were not present at that meeting?

A I was not.

Q To your knowledge, did Mr. Galanis meet with other employees of the New York regional office from time to time?

A I noticed at least one meeting at the New York regional office involving a mutual fund.

Q Were you present?

A No.

Q Perhaps there were others?

A If there were others at the regional office, I was not told. There could be.

Q Did Mr. Galanis, in the course of his cooperation with the SEC and the U. S. Attorney's office, and with you, make disclosures about a man named Theodore or Teddy Arnold?

A He did.

Q Thereafter, did Mr. Arnold cooperate with the U. S., to your knowledge?

A No.

Green - cross/Court

Q To your knowledge, did Mr. Arnold thereafter cooperate with the Canadian and Swiss Governments?

A I have no knowledge of that.

MR. GRAND: I have no further questions, your Honor.

MR. SWEIGART: I have no further questions.

BY THE COURT:

Q You said --

A Your Honor --

Q When you describe the agreement, which you say was reached at a meeting that you think was in May of '71, as I endeavor to follow you, you didn't say anything about any decision not to prosecute. Was that part of the agreement?

A Prosecute for what, sir?

Q For anything.

A The agreement was that he would plead two indictments for any crimes that he committed up to this point. Anything he did afterwards, was not covered by it. It would be over.

Q What about up to that point?

A Up to that point, anything that's related to securities, related matters, was covered by that.

Q And would not be prosecuted?

A Yes.

Q I am not sure I have the sequence straight. Was the episode -- when the Canadians came to the Commission and you

Green - Court

got some, as you describe them, public documents, that episode, was that before or after the episode when Mr. Graber called you and said some Canadians were coming to see him or were already seeing him,

A No, the Canadians came on a different matter, and then saw me prior to Mr. Graber getting in touch with me. My recollection is that the Canadians came in 1972 before the indictment came down in Canada. Mr. Graber's call was 1973 after the indictment came down.

Q Let's take the first episode, the Canadians came to Washington. You're brought to the front office and you say, as I understand it, it would be ethically improper for you to get involved?

A That's exactly what I said, sir, I wouldn't have anything to do with it.

Q What ethical standards were you concerned about?

A Mine. The fact is, here's a man that's telling me everything due to an agreement, and if I would take what he told me and the documents that he gave me, and unbeknownst to him give them over to the Canadians, I felt -- first of all, it would be a breach of my ethical responsibilities, I couldn't deal with it, so I told them this and I told --

Q Did the agreement provide for that?

A The agreement that I couldn't -- no, the agreement

Green - Court

1
2 didn't say anything. I knew about it. I felt that way myself.
3 You see, your Honor, the --

4 Q I am trying to understand why there is an ethical
5 agreement here or an ethical standard that is somehow different
6 from the agreement, or maybe it isn't, I don't know. I don't
7 quite understand why you're bound by the ethical understanding,
8 but not the agreement.

9 A The agreement, I have learned this afterwards, the
10 moneys in Champion were taken in 1971. Our agreement with Mr.
11 Galanis occurred in May of '71. The fraud weren't perpetrated
12 in Canada at the time we made the agreement. We knew nothing
13 about it. All of a sudden, I am working on the case --

14 MR. GRAND: I object to that, your Honor, most
15 strenuously.

16 THE WITNESS: It's a fact, sir.

17 THE COURT: To what?

18 MR. GRAND: The last statement, the last opinion of
19 law that Mr. Green just gave us as to when the frauds in
20 Canada were perpetrated. Certainly, that's not the charge in
21 the indictment.

22 THE COURT: Whatever the charge, it will speak for
23 itself. I am not concerned with his view of when the fraud
24 occurred. I am trying to understand what agreements he thought
25 he was carrying out.

Green - Court

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3 A I was under the impression that Mr. Galanis was finished
4 with his involvement in any crimes. I was dealing with him in
5 an open manner. All of a sudden, during the course of my
6 debriefing of him, I find out something occurred in Canada.
7 Our cases are in the grand jury. We have indictments down
8 already to go to trial. I don't know anything about what's
9 going on up there, and the Canadians come down, and unbeknownst
10 to me, tell me that Galanis has done something in November of
11 1971 in Canada concerning Champion Savings.

12 So at that time I went up to the front office and
13 I said I was not going to assist them because I was the one
14 who was taking from Mr. Galanis' mouth documents involving his
15 American frauds and I was receiving documents from him, and I
16 felt it unethical for me to divulge what he told me to the
17 Canadians because that would be -- it would be a breach of my
18 own ethical standards, and I told this to my superiors, and I
19 told it to the U. S. Attorney's office, and I said I don't want
20 to get involved with it, and they agreed with me.

21 Q What you're telling me is not part of the negotiated
22 agreement, but just your own ethical view of the situation?

23 A Well, the agreement had to do with frauds that occurred
24 up until May or June, what have you, of 1971. This occurred
25 subsequent, and our arrangement was that if Mr. Galanis perpetrated
any frauds thereafter, that we had evidence to prove that he

Green - Court

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2 had, that the deal was off originally, that we wouldn't deal
3 with him any more, because he would be a man who violated his
4 word with the U. S. Attorney's office, any perjury or any crimes
5 done after our agreement. I learned that he, in fact, had been
6 charged in Canada subsequent to our making the agreement and
7 that, in fact, the U. S. Government had a situation here where
8 Galanis perpetrated frauds after he agreed with us to stop, so
9 at --

10 Q Are you saying that once it came to your attention that
11 you thought he had breached the agreement, you felt ethically
12 bound not to tell the Canadians anything?

13 A No. I didn't have any proof, I had no proof of what
14 he had done. I knew nothing about it. They were just investigat-
15 ing it. I was the one debriefing Galanis about American affairs,
16 I felt ethically bound not to give the Canadians anything that
17 he told me, and that I wouldn't deal with them, because he was
18 cooperating with the U. S. Government in connection with their
19 ow cases, and I had no proof or knew anything about his
20 Canadian fraud except what was on that sheet of paper up to that
21 point.

22 It got -- it caught me by surprise when the Canadians
23 told me this.

24 Q But in telling your superiors at the SEC that you
25 wouldn't get involved with the Canadians, are you saying you

Green - Court

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3 didn't think you were carrying out the May agreement?

4 A I don't understand the question, sir. I was -- as
5 far as I was concerned, I was debriefing Mr. Galanis. And the
6 May agreement was that he wouldn't perform any more crimes. I
7 had no proof or any evidence of what the Canadians were doing
8 because they were investigating Switzerland and also Canada.
9 I wasn't aware of what was going on.

10 Q To get to the hear of it, did you ever say to your
11 bosses at the SEC: "One reason I can't tell the Canadians is
12 that we got an agreement with Galanis not to tell the Canadian"?

13 A We didn't have -- we had nothing in the agreement
14 which indicated that I should say anything to the Canadians
15 or not, because he hadn't perpetrated the crime in Canada in
16 May, --

17 Q Whether he perpetrated a crime or not, was it any
18 part of the agreement, as you understood it, not to tell the
19 Canadians anything about Mr. Galanis?

20 A The subject never came up, sir, in June of 1971.

21 Q Then, in any event, in this episode in Washington,
22 you do tell your superiors, for the reasons you have given, that
23 you would not furnish the Canadians any information?

24 A That Galanis has given me, that's correct.

25 Q Then we have the episode where Mr. Graber calls you
and says that some Canadians have visited him seeking

Green - Court

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2 information about Mr. Galanis?

3 A That's 1973, December.

4 Q Mr. Graber asked you if you could supply any information,
5 and you said no?

6 A Right, that's in his notes and indicates that --

7 Q Did you tell Mr. Graber that he should not supply
8 any information?

9 A What he was doing with the Canadians, I didn't know.
10 He said they were down and they were visiting with him. I had
11 nothing to do with what he was doing. I knew nothing about the
12 situation as to how they made contact. He called me and I
13 told him --

14 Q Within the SEC organization, what's your relationship
15 to Mr. Graber?

16 A I don't believe up until that time I ever heard of
17 him.

18 Q He is in a field office?

19 A He is in a field office, and I am in the headquarters.

20 Q Are you his superior -- I don't mean a direct line of
21 command, but within the organization, do you hold a superior
22 rank?

23 A The answer is, at that time, I was a lower rank than
24 I am now, and the answer is that -- I couldn't even relate it
25 because I was an attorney and he was -- and I didn't know who

Green - Court

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2 he was. I can't answer the question, sir. I think I was
3 probably higher than he was.

4 Q In any event, here's what I am trying to understand.
5 By the time of that conversation with Mr. Graber, the issue has
6 already been identified for you as to whether you ought to
7 disclose anything to the Canadians, and you have resolved it that
8 you should not, it's been identified, you faced it, and you have
9 told your superiors: no, you wouldn't do it, and the reason
10 you won't is out of some, as you put it, ethical considerations
11 based on the fact that Mr. Galanis is giving you a lot of
12 information about U. S. cases?

13 A Correct.

14 Q Now, later on, Mr. Graber, whether he works above you,
15 below you, or out there in the field, he is part of the SEC, and
16 he tells you some Canadians are coming and want some information
17 on Galanis, and you tell him: "Well, I won't give you any."

18 Now, do you leave Mr. Graber without any notion one
19 way or the other as to what he ought to do?

20 A Mr. Graber worked for Mr. Malawsky, and if the
21 Canadians -- I am only speculating now -- if the Canadians
22 wanted public quotations on the pink sheets or wanted trading
23 activity in a certain stock, that would be readily available.

24 Q I know that -- they --

25 A They cooperated with the Canadians.

Green - Court

Q I mean did you say to Mr. Graber, once he identified Galanis as the topic, did you say to him, "Now, remember, we have had a lot of dealings with Galanis, he has given us a lot of information, and we have at least some ethical restraints on us"?

A Mr. Graber didn't know anything about it, and I told him that I was at the U. S. Attorney's office, and I was debriefing Galanis, and he wouldn't get anything from me, and I was ethically restricted from doing that. He would get no assistance from me, and whatever he did for the Canadians was going to be independent and unbeknownst to me, and anything that I had gotten from Mr. Galanis, I separated myself from it.

Q But you didn't tell him to be sure to separate himself from --

A He had no association with Mr. Galanis. He didn't know who he was. It was just a contact that was made through the mails.

I think if you saw the files, sir, the documents we brought indicate how it happened.

Q Did you understand the agreement to be that the SEC would not tell the Canadians what Galanis had told you?

A The SEC didn't know what Mr. Galanis had told anyone. I was working for the Department of Justice at the time. I didn't tell anybody at the SEC everything that went on. The only thing I had was notes which I --

Green - Court

Q I'm sorry. During all this time, were you with the Department of Justice?

A What occurred was, initially, when those notes were taken, I was with the SEC, and then --

Q Which notes were taken?

A The three packets of notes that were taken in July --

Q At the debriefing?

A The debriefing notes.

Q You were with the--

A SEC -- then it was resolved that the case would be referred to the U. S. Attorney's office November of 1971. At that time, I was called to the front office, and since this meant some hardship being away from my family, they said, you know, the fact's you're going to New York, so I went to New York and I worked with the U. S. Attorney's office constantly for maybe a year or two every week, and on the trial as it went on, debriefing Mr. Galanis and numerous other of his associates for these cases that went to trial, and I was separated from the SEC.

Then I got this phone call in New York from Mr. Graber in the U. S. Attorney's office telling me that he had gotten a contact from Canada, which the letter is in the files --

Q Wait a minute --

MR. GRAND: He means physically separated.

Green- Court

Q You're just detailed to New York City, you're still an SEC employee during the entire time?

A Yes, sir, taking orders from the U. S. Attorney.

THE COURT: Anything else of this witness?

MR. SWEIHART: No, your Honor.

MR. GRAND: No, your Honor.

THE WITNESS: May I interject one thing? There was a question, Mr. Grand --

MR. GRAND: I object to this.

THE COURT: It's a Court hearing. I don't think we have to be overly concerned.

Can you tell us the topic that concerns you?

THE WITNESS: The last question that Mr. Grand asked me, I think it's inappropriate to disclose in open court, and I would like to be able to tell you my knowledge concerning certain other matters that existed at the U. S. Attorney's office that I happened to learn of which did not involve Mr. Galanis, and in answering Mr. Grand's question --

MR. GRAND: I object.

THE WITNESS: -- in answering Mr. Grand's question, I think I would be faced with some disclosure which may be a breac of my responsibilities over there.

THE COURT: I don't have in mind the question that you're having difficulty with.

Green

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3 THE WITNESS: The question was whether -- I would have
4 to hear it rephrased, but a question concerning Theodore Arnold
5 and I hadn't -- the answer that I am giving related to any
6 information concerning any cooperation with Mr. Arnold concern-
7 ing Mr. Galanis, but I am aware of other information concerning
8 Mr. Arnold which is unrelated to Mr. Galanis at all which
9 occurred at the U. S. Attorney's office.

10 THE COURT: Did you understand --

11 THE WITNESS: He asked me a broad question which
12 encompassed everything, and I feel restricted from answering
13 that question because of the knowledge I have.

14 MR. GRAND: He answered the question, Judge. I
15 assume he answered truthfully. What is he saying is he did not
16 answer it truthfully -- if he is saying --

17 THE WITNESS: That's not so at all.

18 MR. GRAND: If he answered incorrectly --

19 THE COURT: It's not clear to me what the nature of
20 the current problem is.

21 THE WITNESS: I could tell you.

22 THE COURT: I don't want to hear a whole lot of things
23 of Mr. Arnold that have nothing to do with the proceedings
24 before me. If that's what you want to tell me, I don't see
25 the bearing. If you feel there is a question Mr. Grand put to
you that you didn't have a fair chance to answer --

Green

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2 THE WITNESS: I do, sir.

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4 THE COURT: Tell me what it is you think he was asking
5 you that you havenot yet answered.

6 THE WITNESS: If the question could be repeated -- if
7 I could hear the question read back and the response --

8 MR. GRAND: The question was: did Mr. Galanis give
9 you information about Mr. Arnold? You answered yes. That was
10 the question.

11 THE COURT: That wasn't all of it. Then there was
12 something about did Mr. Arnold cease cooperating --

13 MR. GRAND: No. The next question: did Mr. Arnold
14 cooperate with the U. S. authorities? He said no. Did Mr.
15 Arnold cooperate with the Swiss and Canadians authorities?
16 And he said, "I don't know." Those were the questions and
17 his answers.

18 THE WITNESS: I think those -- when I am thinking it
19 over, those questions require clarification. One answer, I
20 think, is something unrelated to Mr. Galanis, but there were
21 more than one transaction concerning Mr. Arnold. There were
22 three or four other frauds involving him.

23 THE COURT: Who asked you about those?

24 MR. GRAND: No one.

25 THE COURT: Just a minute.

THE WITNESS: The implication in his question is that

Green

Mr. Arnold only had a connection with Champion.

THE COURT: Don't worry about the implication of his question. He is not asking you about Mr. Arnold's other matters.

THE WITNESS: In response to his last question, I have knowledge of Mr. Arnold was cooperating with the U. S. Attorney's office in an entirely different situation unrelated to Mr. Galanis.

THE COURT: All right.

THE WITNESS: Which had nothing to do with me, and pre' -- but I learned of it by accident, and I can tell you the exact details.

THE COURT: I don't think anybody needs to know the details for purposes of this hearing.

MR. GRAND: I have no questions, your Honor.

THE COURT: You're excused, Mr. Green.

(Witness excused.)

THE COURT: Does that conclude the evidence on the issue of -- I guess the claim is breach of a plea bargain agreement?

MR. GRAND: That concludes our evidence on motions with respect to breach, with respect to the motion that he has already been proceeded against and punished, and evidence on the subject of speedy trial.

THE COURT: Does that conclude the government's

1 evidence on those topics?

2 MR. SWEIGART: Yes, it does.

3 THE COURT: Then, you tell me what's left.

4 MR. GRAND: We have the proceedings on the merits to
5 continue with on Monday, or, at least, as I understand it, the
6 government has rested, and we are to go forward with respect to
7 the evidence that has been introduced there.

8 THE COURT: What do you have in mind there? How
9 many witnesses?

10 MR. GRAND: I have in mind one witness, your Honor.

11 THE COURT: Is that just on the issue of whatever --
12 authentication, admissibility --

13 MR. GRAND: Yes. Either way you characterize, yes.

14 THE COURT: Something about the validity of those
15 documents?

16 MR. GRAND: Precisely.

17 THE COURT: All right. You have testimony on that,
18 as well?

19 MR. SWEIGART: Yes, I would have one witness concern-
20 ing that same issue, your Honor.

21 THE COURT: So, then, that shouldn't take too much
22 time on Monday?

23 MR. GRAND: I don't think so, assuming that our
24 Canadians speak English, as those who have appeared before do,
25 I have no problems.

1 THE COURT: There is one disposition that morning,
2 but I don't think it will take all that much time.
3

4 MR. GRAND: 10:15 or 10:30?

5 THE COURT: If getting up from New York is a problem
6 and you want to at least figure 10:15, you will be safe.

7 (Court adjourned at 5:15 p.m.)
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TRANSCRIPT OF PROCEEDINGS, APRIL 26, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----x
:
JOHN PETER CALANIS,
:
Plaintiff,
:
- versus - Civil Action
:
ERMEN PALLANCK, United States No. N-77-140
Marshall for the District of
Connecticut,
:
Defendant.
:
-----x

United States Court House
New Haven, Connecticut
April 26, 1977

B e f o r e:

ROBERT C. ZAMPANO, U. S. D. J.

A p p e a r a n c e s:

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141 CHURCH STREET
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A p p e a r a n c e s (Continued):

For the Defendant:

RAYMOND SWEIGART, Asst. U. S. Attorney
270 Orange Street
New Haven, Connecticut, 06510

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2 THE COURT: I will take the matter of John
3 Peter Galanis versus the Marshal of the District of Connecticut,
4 N-77-140.

5 I believe the matter is here on an order to
6 show cause why a writ of habeas corpus should not issue.

7 MR. MARTIN: Good morning, your Honor.

8 THE COURT: Good morning.

9 MR. MARTIN: Your Honor, I am not a member of
10 the bar of this court. Mr. Grosby, of the firm of Grosby
11 and Hohn, has appeared in this action with us as local counsel.
12 He was detained this morning in another case. I would ask
13 leave to proceed.

14 THE COURT: Yes, the motion is granted.

15 MR. MARTIN: Fine. Your Honor, I think at the
16 outset one of the critical factual issues in this case, as we
17 perceive it, is what immunity John Galanis was granted in the
18 Southern District of New York at the time he originally agreed
19 to plead guilty and co-operate. I have discussed that matter
20 again over the past few weeks with the U.S. Attorney's office in
21 the Southern District and again this morning with Mr. Sweigart.
22 I think that it is agreed now with the government that there is
23 no question that Mr. Galanis was originally granted trans-
24 actional immunity.

25 Is there any disagreement with that?

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3 MR. SWEIGART: Our basic position is that Judge
4 Newman was correct in his factual finding and, furthermore,
5 that the factual findings that were made by Judge Newman are
6 not properly before this Court.

7 Judge Newman found, if I could have a chance
8 to address that point at this time --

9 THE COURT: The only question pending right
10 now is do you agree with the statement made by counsel?

11 MR. SWEIGART: I would say basically that Mr.
12 Galanis was granted informal transactional immunity from
13 prosecution by the United States.

14 THE COURT: Is this stipulation a significant
15 and critical factual difference than the government's posi-
16 tion before Judge Newman?

17 MR. MARTIN: I think this is perhaps where Mr.
18 Sweigart and I part company. I think that it is. I think
19 it's a significant difference from the facts as found by
20 Judge Newman.

21 Mr. Sweigart will obviously argue differently,
22 but I would like to address myself, if you want to hear from
23 me now, on that point, your Honor.

24 THE COURT: Well, the only thought I had was
25 that if there is a significant, material and critical agree-
ment on a fact or series of facts which were not made known

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2 to Judge Newman, would it not be more appropriate for you to
3 ask Judge Newman to reconsider his rulings in the light of
4 this admission by the government?

5 MR. MARTIN: I think that it would be an ap-
6 propriate disposition at this point, your Honor.

7 THE COURT: All right. Now, just refresh my
8 recollection on Judge Newman's findings with respect to this
9 issue.

10 Basically, I thought Mr. Brodsky testified be-
11 fore Judge Newman that transactional immunity was granted,
12 but then he defined it within the context of use immunity
13 and Judge Newman stated that there was an ambiguity in what
14 was promised Mr. Galanis, so then he looked to the written
15 contemporaneous documents that were available to him through
16 the exhibits, and concluded, among other things, that when
17 the use immunity was granted --

18 MR. MARTIN: I think that my reading of his
19 opinion is that he did conclude that only use immunity was
20 granted and that's why I thought that this particular fact,
21 that there was indeed transactional immunity granted initi-
22 ally, was a very important one.

23 THE COURT: How do you view the government's
24 very carefully worded stipulation that Mr. Galanis was granted
25 informal transactional immunity? Do you see any significance

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2 in the word "informal"?
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4 MR. MARTIN: I do not, your Honor. Certainly,
5 it's been my experience that is a practice followed often,
6 certainly in the Southern District and in other districts,
7 and that it is the understanding of counsel and the govern-
8 ment that that grant of immunity is as binding upon the govern-
9 ment as a formal grant, and because defense counsel accept
10 that, you don't go through the procedure of bringing somebody
11 before a grand jury for such a proceeding.

12 THE COURT: All right. Now, although it may
13 be obvious, at least for the record, if we assume just for
14 the sake of argument that Judge Newman would conclude that
15 the immunity granted Mr. Galanis was transactional immunity,
16 what effect do you think that would have had on his final
17 rulings?

18 MR. MARTIN: I think, your Honor, that would
19 lead to the conclusion that the immunity is transactional.
20 That the government cannot participate in an extradition pro-
21 ceeding against Galanis.

22 I think the confusion to which Judge Newman
23 referred in his opinion was really generated more, not as to
24 what Galanis received originally, because I think Mr. Brodsky,
25 who is -- has a distinguished record and is a very able lawyer,
worked in the district for years, was -- knew the difference

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2 between transactional and use immunity. I think where the
3 confusion developed was, really, when Judge Newman started to
4 examine Mr. Brodsky as to what impact transactional immunity
5 had in the extradition context, and Mr. Brodsky was attempting
6 to articulate, A, what he told Galanis' attorneys in '73 and
7 the thinking process that went into that. I think that if
8 you read the transcript of his testimony what really comes
9 out is that he was saying in effect there is both use and
10 transactional immunity. Transactional immunity in the sense
11 that the United States government cannot participate in the
12 proceedings, the Department of Justice cannot process the
13 extradition.

14 What you will find in some of the older cases,
15 that these proceedings are not necessarily brought by the U. S.
16 Attorney. In many of the older cases, particularly, you will
17 find that the proceedings are brought by private counsel re-
18 tained by the foreign government. And he was recognizing
19 that. For example, perhaps it might help just to make one
20 reference to the testimony, on page 51, starting at line 18,
21 which he was explaining to the Court his understanding of
22 the agreement. He said, "We immunized him against the use
23 of his testimony. We have given him a transaction -- the
24 broadest immunity we were capable of giving for U. S. involve-
25 ment. I didn't want to interfere with the Canadian government,

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3 and thought through the process of what would happen if the
4 government said we may not participate, but you may partici-
5 pate, whatever you want. You have access to our court.
6 But our official Department of Justice may not participate
7 in the proceedings, retaining outside counsel."

8 I think that was what Mr. Brodsky was saying
9 was his thought process when in 1973 the question of possible
10 extradition first arose. I think that he -- and this is one
11 other fact that is clear -- nobody suggests that at the time
12 the original plea agreement was made that they foresaw extra-
13 dition. Neither Mr. Galanis nor the United States at the
14 time he received transactional immunity had any thought that
15 any country would come to extradite Galanis. That question
16 did arise in 1973, and Mr. Brodsky's testimony again was when
17 that question arose, Galanis' attorneys came to him and said,
18 "We have this agreement pursuant to which Galanis is co-
19 operating in the various investigations. Do we need any
20 amendment to that to preclude the government from participat-
21 ing in any extradition proceedings against him?" It was at
22 that point that Brodsky testified he told Galanis' attorney,
23 "You don't need any additional agreement, you are protected
24 because the grant of transactional immunity by its nature
25 precludes us from participating in any extradition proceeding."

It was then in the --

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2 THE COURT: If my recollection is correct, he
3 did not state that, or testify that he stated to counsel that
4 the grant of transactional immunity would cover it. I thought
5 he said something to the effect, "The immunity granted would
6 cover it." Was the word "transactional" used?

7 MR.MARTIN: I'll take a look, your Honor. But
8 my confusion arises because Brodsky so clearly testified in
9 a number of places that the grant was transactional immunity.
10 The closest thing -- yes. Here. Page 42, your Honor, lines
11 14 through 24. Going back to the question, Judge --

12 THE COURT: Here is where I picked it up, on
13 page seven of Judge Newman's opinion. "He -- referring to
14 Brodsky"-- stated that Galanis' attorneys asked him whether
15 he believed the plea agreement should be modified to cover
16 the United States' involvement in an extradition request.
17 Brodsky testified that he responded, quote, I don't think
18 you need anything more on this agreement to cover you. I
19 think you're covered." And he cites page 41 of the transcript.

20 MR. MARTIN: Right. The question continued on
21 page 42. Again by the Court, "Is it your testimony that even
22 though those topics weren't --"

23 THE COURT: "Were" or "weren't"?

24 MR. MARTIN: "Were not."

25 THE COURT: "Were not."

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3 MR. MARTIN: " -- discussed, that you felt the
4 transactional immunity agreement that you described, in fact
5 did provide some protection to Mr. Galanis from a U. S. role
6 in an extradition proceeding?"

7 The answer: "Yes, that was my opinion when asked
8 the question, to look back on the immunity deal that had been
9 entered into, did I believe that deal covered that kind of
10 situation, and it was my opinion at the time that it did, and
11 I so stated to Mr. Grand and Mr. Grand's associate. I don't
12 remember who I spoke to. I said my understanding is that we
13 have given him complete transactional immunity, that means
14 we can't prosecute and that means we can't use the fruits
15 of that testimony against him in a proceeding in which the
16 U. S. government is a party."

17 Your Honor, I think that factual record really
18 gives us two grounds why the government cannot participate
19 in the extradition proceeding. One, it is our position that
20 Mr. Brodsky's conclusion of law was correct, that a grant
21 of immunity is just that, you don't get into a question of
22 use as the same government cannot participate. And that
23 carried through this proceeding the same way that Judge
24 Newman found that the use immunity would carry through this
25 proceeding; if you accept the fact of this transaction, then
it seems to me it carries through to this proceeding.

Our second point is somewhat different. Even if you were to disagree with our legal conclusion that transactional immunity precludes participation, Mr. Brodsky made that representation to Mr. Galanis to procure his continued co-operation with the government, and we submit that under the Second Circuit's decision in U. S. versus Palermo -- actually -- I'm sorry, it's Palermo versus Warden, it's a habeas -- that that representation binds the government. In Palermo -- the government here says that's beyond Mr. Brodsky's authority, he can't bind the government that way.

Palermo was a case in which the district attorney said to somebody, "If you plead guilty and return some stolen property, we will see that you are paroled in one year." That agreement was not fulfilled. The parole board did not grant parole at the end of the year. He brought a habeas corpus proceeding and the Second Circuit eventually held -- the state argued the district attorney cannot bind the parole board, they have a separate, independent function, cannot bind them. The Second Circuit said the defendants have a right to hold prosecutors to their promises and we will see that they are fulfilled, and they ordered his release, even though technically the district attorney did not have the power.

I think that's the same situation here. If

you conclude that the transactional immunity in and of itself didn't preclude participation, certainly Brodsky's representation is one that is enforceable against the government.

Your Honor --

THE COURT: Well, you are saying, even assuming that he lacked the authority to make a binding promise along these lines, the Court has the power to enforce that agreement under the circumstances of this case.

But let me ask you this. In your opinion did he have the power to bind the government in the way you claim?

MR. MARTIN: I believe so, your Honor, because I think that he had the power to provide -- U. S. Attorney's office had the power to provide transactional immunity, and that in and of itself had the effect, so I think -- for that reason I obviously think it does. But even if he didn't, I think that the government is bound by the representation of its prosecutor.

One other point on the immunity part. And that is the question of use. Assume for the moment that all he got was use immunity. We think that Judge Newman was in error in finding that the government had met its burden of proving a lack of taint in this proceeding. I think the reasons for that are pretty well spelled out in the brief.

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2 I think one factor is important. Judge Newman
3 relies, as showing probable cause, on the testimony of Theodore
4 Arnold. The testimony of Mr. Green in this record, who's the
5 SEC investigator, is that John Galanis gave information about
6 Theodore Arnold and, thereafter, Theodore Arnold became --
7 co-operated with the government. It seems to me that on that
8 factual basis there is an inference that the reason Arnold
9 co-operated against Galanis with the Canadian government,
10 because Galanis co-operated against Arnold here.

11 I think the Second Circuit decision in U. S.
12 versus Curzio clearly supports the view that the government
13 has the burden of showing even the testimony of live witnesses
14 was not derived from the immunized testimony of defendant.
15 So on the use question, the government has not satisfied its
16 burden. Certainly, there is an inference there. It is not
17 the defendant's burden to prove that Arnold's testimony was
18 not tainted by the fact that Galanis previously gave informa-
19 tion about him. It is the government's burden -- and a heavy
20 one -- to establish that the evidence it presented was free
21 of taint.

22 Your Honor, just to go back a minute. There's
23 a -- on the question of whether or not the prosecutor's
24 decision can bind the government. Probably the closest case
25 on the point is the decision in U. S. versus Geiser, which we

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2 cite in our brief, where the prosecutor's representation was
3 held to bind the State Department in an extradition proceeding.

4 THE COURT: Were you present at the hearing
5 before Judge Newman?

6 MR. MARTIN: Yes, your Honor.

7 THE COURT: Did the government concede that Mr.
8 Brodsky granted Mr. Galanis informal transactional immunity?

9 MR. MARTIN: They did not, your Honor. We
10 really did not get to an argument on the issue. Testimony
11 was taken and the hearing concluded, and so that we never
12 got to a stage where that was -- the -- the briefs certainly
13 indicate to me -- government's brief indicated they were
14 claiming "You don't have use immunity."

15 THE COURT: That was my next question. While
16 not being specific in open court, did the government and its
17 briefing documents and moving papers contend that all that
18 Mr. Galanis received was use immunity?

19 MR. MARTIN: That is my recollection of it,
20 your Honor. And I have the document in court and can --
21 Judge Newman in his opinion, your Honor, at page 5, says,
22 "And this view of the agreement as barring only use of Galanis'
23 information has been expressed by the government throughout
24 this proceeding."

25 THE COURT: Well --

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2 MR. MARTIN: I'm reading the government's brief
3 -- post-hearing brief, page 7. The government says, "The
4 Brodsky memo of May 10th, 1973, which sets out the agreement
5 as understood at the time, nowhere talks of transactional
6 immunity, but speaks of use. While Mr. Brodsky testified he
7 meant transactional immunity, he clearly stated, when asked
8 whether he thought he had the power to immunize Galanis from
9 foreign prosecution, "No, I wasn't purporting that power.
10 My only interest was making sure there was no Fifth Amendment
11 privilege problem within the confines of the United States."

12 So the government was, I think, taking a posi-
13 tion -- that's the way I understood it all the time. Indeed,
14 it was in reading Judge Newman's opinion after what I thought
15 was David Brodsky's very clear testimony with regard to the
16 fact that he had been given transactional immunity that I
17 took this up with the Southern District of New York, who I
18 know had some contact with Mr. Sweigart on that whole question,
19 and that led to my conversation with Mr. Sweigart this morning.

20 THE COURT: Judge Newman's opinion indicates,
21 does it not, that, at least as he viewed the issues as framed
22 before him, even counsel for the defendant assumed that all
23 that was granted was use immunity.

24 You will notice on pages 5 and 6, he -- Judge
25 Newman --- indicates, "defense counsel's position has changed

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2 in the post-hearing memorandum," and goes on to state, "With
3 this shift in position, is troublesome," and so forth.

4 MR. MARTIN: Well, unfortunately, that argument
5 was never addressed to us, your Honor.

6 Let me respond. In the first place, saying
7 that the motion papers used to trigger this, to which Judge
8 Newman refers, were very quickly drafted. We had been led
9 to believe that the first thing that would happen would be a
10 scheduling conference on the matter and that we would then
11 fix a time for motions, et cetera. I think it was on a Thurs-
12 day afternoon, or perhaps even a Friday, that we heard that
13 there was to be a hearing on Monday. As I said, that had not
14 been our original understanding. So that the motion papers
15 were drafted very quickly for the purpose of showing that we
16 had a right to a hearing on this issue.

17 I think the use issue is the clearest issue
18 showing the need for a hearing. The transactional immunity
19 is, you know, certainly a more complex one, but I don't think
20 that we really have ever taken a position that he did not
21 get transactional immunity.

22 THE COURT: Let me ask you this question. Do
23 you think that perhaps Judge Newman was misled by the govern-
24 ment as to the government's view of what was given Mr. Galanis
25 in terms of immunity?

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2 MR. MARTIN: I think that's possible, your Honor.

3 THE COURT: Are you suggesting that if the
4 government has stated at the outset, for example, of the
5 hearing, that the government concedes that he was given --
6 Mr. Galanis -- was given transactional immunity, that Judge
7 Newman sooner or later would have said, "Well, that covers
8 extradition, and the United States cannot be a party to this
9 action," and grant you relief?

10 MR. MARTIN: I think that is very possible,
11 your Honor. I just, you know, obviously, can't say for
12 sure. I think that I see some ambiguities in Judge Newman's
13 opinion which I really have trouble tracking on how his
14 thinking was going on that issue. But I do think it certainly
15 is a different record before your Honor in the fact that
16 there is that concession. It's not being litigated here.

17 THE COURT: I have not read the transcripts.
18 I don't even believe they've been submitted to me.

19 MR. MARTIN: I'm sorry, your Honor.

20 THE COURT: I am not sure I would have read
21 them in the short time I had.

22 MR. MARTIN: I'll be happy to submit a copy to
23 you.

24 THE COURT: But it seems to me, at first blush,
25 in reading Judge Newman's opinion that as the issue unfolded

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2 before him initially it appeared to him that both the govern-
3 ment and the defendant were in agreement that use immunity
4 had been granted, and it was after the hearing that the de-
5 fendant took the position that transactional immunity was
6 granted.

7 In any event, Judge Newman picked up the issue
8 and decided it, and decided that only use immunity was granted.
9 Which would lead me to conclude -- at least without thinking
10 it out a bit more -- that the government challenged your
11 opinion that transactional immunity was granted and that
12 Judge Newman had to make factual findings on that question.
13 Whereas, now you are claiming before me that the factual
14 question and the issues with respect thereto are precluded
15 by the government's stipulations, and that what is left for
16 me is to decide what effect does transactional immunity have
17 in an extradition proceeding.

18 MR. MARTIN: Yes.

19 THE COURT: All right. I take it you don't
20 agree with the position?

21 MR. SWEIGART: Not at all, your Honor.

22 MR. MARTIN: Your Honor, let me just -- there
23 are other issues in the brief which we will leave to the
24 briefs, your Honor. I think this is the one we really wanted
25 oral argument on.

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2 THE COURT: Yes. Before I hear the government,
3 maybe I will take up the Mahigel matter, if it is ready.
4

(Later)

5 THE COURT: Now we will go back to the Galanis
6 matter.
7

8 MR. SWEIGART: Your Honor. what I meant to
9 represent this morning when I indicated that Mr. Galanis had
10 been granted informal transactional immunity from United States
11 prosecution was not an emphasis on the word "informal," but
12 an emphasis on the matter of United States prosecution, and
13 I believe this is entirely consistent with Judge Newman's
14 finding on page 11 of his memorandum where he states that,
15 based on these two documents, Brodsky's testimony and the
16 defendant's representations, it is clear that the consideration
17 the defendant bargained for and received in exchange for his
18 guilty pleas in co-operation was immunity from United States
19 prosecution for crimes concerning any matters he discussed
20 with the American authorities. That's informal transactional
21 immunity. That's exactly what Judge Newman found he bargained
22 for and got. And the government promised to insure that any
23 information thus obtained would not be used against him in any
24 proceeding including extradition. So --
25

THE COURT: I just want to read that myself.

MR. SWEIGART: Certainly.

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3 THE COURT: Is that the definition of trans-
4 actional immunity?

5 MR. SWEIGART: Well, that's the definition that
6 I'm going under. In other words, your Honor, that he is --
7 anything, there is no -- there is immunity from any prosecu-
8 tion concerning those matters. It doesn't say that the matters
9 that he spoke to him about they wouldn't use any of his
10 testimony against him, they wouldn't prosecute him on anything
11 that arose from that, and that's the definition that I am
12 operating with. That's the type of transactional immunity --
13 that's the type of immunity that was given, and I consider
14 that to be informal transactional immunity. In other words,
15 they promised Mr. Galanis "We won't prosecute you for anything
16 arising out of these matters." They didn't say "We won't use
17 the testimony you give us." They said, "We won't prosecute
18 you on it." That's what I'm considering and that's what the
19 Southern District of New York considered to be an informal
20 grant of transactional immunity, and I believe that that's
21 what Judge Newman found.

22 Now I think it's important to separate that out
23 from what kind of immunity was he given as far as extradition
24 is concerned. Judge Newman further found by the terms of
25 the agreement that was made -- and the defendant admits that
no one -- the petitioner herein admits that no one thought of

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2 extradition at the time the plea agreement was entered into.
3 By the terms of the memoranda, that the government just was
4 not barred --

5 THE COURT: You know, there was a lengthy hearing
6 before Judge Newman --

7 MR. SWEIGART: That's correct.

8 THE COURT: -- and these matters are so clear
9 to you as a result of that hearing, but to me, they're not
10 quite as clear. Are you stating that at the time there was
11 this discussion on immunity that no one thought about the
12 possibility of extradition? I thought somewhere along the
13 line counsel for Galanis did bring up the Canadian situation
14 and asked whether the plea covered extradition, and Mr.
15 Brodsky testified before Judge Newman that he responded, "I
16 don't think you need anything more on this agreement to cover
17 you. I think you're covered."

18 MR. SWEIGART: I was about to come to that,
19 your Honor. This is not at the time of the original agree-
20 ment. The original agreement was made -- the plea agreement
21 was made prior to the -- the charges being lodged in Canada
22 and prior to the request of Canada for Mr. Galanis' extradition.
23 Afterwards, when that occurred, Mr. Galanis was still being
24 used as a witness by the Southern District of New York. At
25 that time Mr. Galanis' counsel came to Mr. Brodsky and said,

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2 'Oops, they've -- they've requested his extradition. What
3 do we do now? Is he covered by our agreement?" And Brodsky
4 says "in our opinion, I think he is. We don't have to do
5 anything about it."

6
7 Now, the government's position on this has
8 been that, not only did Mr. Brodsky not have any authority to
9 bind the government in this matter, but that he was, frankly,
10 just giving his opinion. That there was no further promise
11 at this point. That it merely was his opinion that was given.
12 That the -- that the grant of immunity, which hadn't contemplated
13 extradition, did cover extradition as an afterthought. No
14 memoranda was made of this. And I think, as Judge Newman
15 properly notes, it's surprising in this extraordinary matter
16 none was made of this if this was actually the intention.
17 Mr. Brodsky offered his opinion at this point. Which we just
18 believe was improper and incorrect.

19 THE COURT: Well, may I ask you this. When the
20 government grants transactional immunity, why is it in the
21 contemplation of the parties that each and every event should
22 be spelled out and covered? Assuming he was granted full
23 and formal transactional immunity, is it your position that
24 unless extradition was also mentioned at the time, that any
25 extradition proceedings would not be covered by full transac-
tional immunity? Is that your position?

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3 MR. SWEIGART: As a matter of fact, your Honor,
4 I believe if a full formal grant -- and again, I have not been
5 concentrating on "formal" and "informal" -- but even if a full
6 formal transactional grant had been given from prosecution by
7 the United States, indictment for a crime and prosecution for
8 that crime, if they didn't go beyond that to discuss the parti-
9 cipation of the United States on behalf of the government of
10 Canada -- I think it's important to remember that this action,
11 really -- not "this action," but extradition proceeding -- was
12 originally brought on behalf of the Canadian government pursuant
13 to their treaty rights; this is not a prosecution by the
14 United States at all, merely by virtue of the treaty supplying
15 the means to remove Mr. Galanis from this jurisdiction to the
16 jurisdiction of the Canadian authorities -- that, simply, isn't
17 what transactional immunity contemplates. And I don't think
18 a formal transactional immunity would have been granted from
19 extradition because I don't beleive that it is proper or
20 possible.

21 I should think that the most the United States
22 attorney's office for the Southern District of New York could
23 have done would be to indicate to Mr. Galanis that they would
24 intercede on his behalf with the State Department and ask
25 them -- that's a step that's yet to be taken, as a matter of
fact; the State Department still reviews Judge Newman's finding

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2 and has to issue an executive warrant of arrest and extra-
3 dition. And that warrant does not automatically follow.
4 There's still discretion in the Secretary of State to say,
5 "Well, in light of Mr. Galanis' co-operation, or in light
6 of whatever reason he may have, we do not intend to extradite
7 him."

8 THE COURT: May I ask you this -- because some
9 of these representations come as a surprise to me this morn-
10 ing -- what is Mr. Galanis' present situation? Is he out on
11 bond --

12 MR. SWELIGART: Yes, he is.

13 THE COURT: -- is he incarcerated?

14 MR. SWEIGART: He's out on bond.

15 THE COURT: All right. If this motion had not
16 been brought, what proceedings would have occurred after Judge
17 Newman's ruling?

18 MR. SWEIGART: Well, the proceedings that have
19 in fact occurred by Judge Newman's order, the entire record
20 was certified to the Department of State within two months
21 thereafter. I believe that's under Title 18, 3188, though
22 I'm not -- it's in that vicinity. If I'm incorrect on that
23 citation -- within two months the warrant would either issue
24 from the Secretary of State or he would be released, he would
25 not be extradited. So that decision would have been made.

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3 There is -- I'm sorry, I don't have the citation
4 on hand at this point, but there is a Supreme Court decision
5 that indicates that that two-month period is stayed when a
6 habeas corpus is brought. It doesn't begin to run until the
7 completion of the --

8 THE COURT: That was my next question.

9 MR. SWEIGART: In other words, that two months
10 would commence, presuming this is taken to the Supreme Court,
11 at the time cert's denied or decision's rendered; that's when
12 the two-month period would begin to run.

13 Then again, the administrative -- the executive
14 still is sitting there with the option, with the discretion
15 to extradite or not based upon Judge Newman's findings. And
16 at this point the consideration would be made.

17 THE COURT: What prejudice, if any, results
18 from a continuation of this habeas corpus hearing -- for the
19 following purpose: That the petitioner be given an opportunity
20 to submit a motion for reconsideration of Judge Newman's
21 memorandum of decision based on the stipulation made in open
22 court by the government before me?

23 Now, several things could happen. Judge Newman
24 could say, "The stipulation in no way affects my memorandum
25 of decision, and I deny reconsideration." At this point
everyone comes back to me. Or he may say, "In view of the

1 stipulation, I grant the motion to reconsider and I will
2 hear counsel on the matter." Everyone appears before him,
3 the matter is argued, and he either affirms or modifies or
4 sets aside his prior rulings. Or, I suppose, he has other
5 options available to him in the light of the stipulation.
6

7 Wouldn't that be a safer and wiser course to
8 follow than for me to sit here on the third floor of the
9 court house and agree, or disagree, with the government that
10 this new factual concession would in no way influence Judge
11 Newman when all we have to do is go to the second floor and
12 ask him if it does? If he says it does, that's one thing.
13 If he says it doesn't, come on back up to the third floor --

14 MR. SWEIGART: Well, I --

15 THE COURT: -- rather than sit here and try to
16 determine what effect this stipulation would have on Judge
17 Newman and have me, in effect, read his opinion?

18 Why don't I just adjourn this hearing and you
19 attorneys go back down and ask Judge Newman to answer the
20 question whether or not the stipulation in open court would
21 affect his opinion in this case. If he says, "Yes, it does.
22 I think I ought to hear counsel fully on the matter," I am
23 sure he will set down a hearing. If he says, "No," come on
24 back upstairs and I will hear you on the habeas corpus.

25 MR. SWEIGART: I think the first matter, your

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2 Honor, is that I do not believe he has the power to recon-
3 sider at this point after the record is certified to the
4 Secretary of State procedurally.

5 Secondly, what is considered now as a factual
6 concession, I take issue with that.

7 THE COURT: All right.

8 MR. SWEIGART: Even assuming it, I don't believe
9 I have made a factual concession, and I am sorry if -- we
10 have been going back and forth with the terms, and what do
11 we mean by "transactional," what do we mean by "use." The
12 government has been arguing all along before Judge Newman and,
13 also, before your Honor, that we're talking about extradition.
14 That is, when I say he was not given transactional immunity --
15 and I will hold to that today -- he was not given transactional
16 immunity from extradition. That's the argument we made before
17 Judge Newman and that's the argument we still make today.
18 We're not conceding that he was given transactional immunity
19 from extradition. He was given precisely the immunity that
20 Judge Newman found he was guilty of.

21 Judge Newman was correct. He had all the facts
22 before him. He had Mr. Brodsky on the stand for an entire
23 morning. He had substantial briefs on the matter. I think
24 it's just -- to go back and file some more briefs and argue
25 it in front of him some more.

Even conceding that he would have the power to reconsider at this point, I think, is actually a waste of time. He had it squarely before him. He had the testimony there and he ruled precisely and found factually exactly what kind of immunity Mr. Galanis had. And he says, in other words, as to extradition -- and I think it's important to keep those separate -- Galanis receive use immunity.

In looking at the statement, he says by its terms the statement does not bar government involvement in an extradition proceeding; instead, it specifically contemplates United States participation in an extradition proceeding and only promises nondisclosure of information in such a proceeding. In effect, use immunity as to extradition proceedings. That's where the government's position is that Galanis was granted only use immunity as to extradition. He was granted immunity from prosecution for crimes concerning any matter he discussed.

THE COURT: What kind of immunity from what type of prosecution?

MR. SWEIGART: He was granted -- the immunity that he was granted from prosecution.

THE COURT: Where does Judge Newman say that?

MR. SWEIGART: I think that is -- I am getting that from the language on page 11. He again, I think, properly avoids the use of "transactional immunity" because of the

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2 confusion that it is -- that it has obviously caused and
3 because of the ambiguities as to exactly what was going on.

4 THE COURT: Yes. But --

5 MR. SWEIGART: He says the entire matter --

6 THE COURT: -- you are eliminating that ambiguity
7 to a certain extent by your concession before me. Now --

8 MR. SWEIGART: Well, I'm --

9 THE COURT: The transactional -- just a moment.
10 The transcript will, of course, correctly quot you, but I
11 thought you said there is no question that Mr. Galanis was
12 granted informal transactional immunity. I don't recall
13 you saying "except for extradition."

14 MR. SWEIGART: Well, I went on to say quite
15 specifically, your Honor, "from United States prosecution."
16 And that is particularly important in light of the fact that
17 an extradition is not a criminal proceeding. And there is
18 a very lengthy line of cases that, if -- made quite clear
19 the distinction that must be kept, that this isn't a United
20 States prosecution. The matter in front of Judge Newman was
21 not a United States prosecution by virtue of the treaty we
22 were providing legal representation to the Government of
23 Canada in an extradition, which is civil -- well, basically,
24 it's not quite civil, but it's sui generis. It's an entirely
25 different animal and just wasn't contemplated in the original

immunity grant. And I thought that Judge Newman had that clearly before him. He certainly had all the facts with him to make a ruling.

THE COURT: If it appears so clear in your mind that Judge Newman assumed that the government was conceding transactional immunity from transactional immunity from United States prosecution only, but not from extradition, why does the government have any objection whatever in going back and asking him --

R. SWEIGART: Well, basically --

THE COURT: -- through moving papers? I don't mean to go downstairs and sit in his office and ask him. I mean through the presentation of moving papers to him. Primarily by -- in the first instance, by the petitioner, and a response by the government? At that point -- not to repeat -- but it would seem to me Judge Newman could merely write on the margin of the motion for reconsideration "Denied." Or he may say "Granted. Oral arguments to be heard on such and such a date," and he could set forth his analysis based on the new factual stipulation. If, indeed, he considers it a new one and one that he had not been apprized of before.

You state that, even if he decides that it would have affected his ultimate ruling, there is nothing that he could do about it?

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3 MR. SWEIGART: I'm not particularly sure there
4 is, actually, having certified the record down and made the
5 rulings, no.

6 THE COURT: Well, we're trying to do justice
7 here. Let us just assume for the sake of argument that Judge
8 Newman does state in an opinion, "If I had known of the
9 government's concession, my conclusion on the issue would
10 have been different. However, I am unable to do anything
11 about it because of some rule or some case law." I certainly
12 could do nothing about it on a habeas, could I?

13 MR. SWEIGART: Well, I question that. As we
14 outlined, I think, in our brief, the scope of review in the
15 habeas before your Honor is quite narrow and it's been estab-
16 lished by a long line of Supreme Court decisions which have
17 been recently -- as recently as 1975 affirmed or continued
18 to be followed by the Second Circuit.

19 THE COURT: You mean -- and I say this just for
20 the sake of argument -- if Judge Newman concludes that he made
21 an error, that neither he nor I is in a position to do justice
22 in this case?

23 MR. SWEIGART: Well, I think the fact is, if
24 we're talking about an error of fact. Usually, I think that
25 he would not have the opportunity to have more facts before
him. And I am not sure there are any more facts put before

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2 him. The effect of what I meant to say this morning, or what
3 that stipulation was, was that Mr. Galanis was granted exactly
4 the immunity that Judge Newman found that he had and granted
5 on page 11 of his memorandum.

6 THE COURT: Well, now, if that's the stipulation,
7 then there is no purpose in going back to Judge Newman. All
8 you are saying is, "I stipulated to something Judge Newman
9 found as a fact."

10 MR. SWEIGART: Well, that's what I believed I
11 was doing at the time.

12 THE COURT: I don't think Mr. Martin felt that
13 that's all you were doing this morning.

14 MR. SWEIGART: Well, he disagrees with what
15 Judge Newman actually found. I guess we're saying Judge
16 Newman could have perhaps been clearer by using the term
17 "transactional." However, I'm not sure. I find that that is
18 one of the difficulties in separating that. I thought Judge
19 Newman was quite clear, and each time he says "use immunity
20 as to extradition proceedings," he's talking -- in the extra-
21 dition context there clearly was no transactional immunity
22 and the government continues to hold to that position. There
23 was only use immunity.

24 THE COURT: Fine. In the light of this argument
25 I would like to take a ten-minute recess to re-read Judge

Newman's opinion on this issue. I will be back at 11:45.

(Recess)

THE COURT: The Court has now had an opportunity to re-read Judge Newman's opinion with respect to the issue discussed prior to the recess.

As I read Judge Newman's opinion it occurs to me that Judge Newman was faced with the issue concerning the type of immunity granted Mr. Galanis. Based on the factual evidence presented to him and despite the classification that Mr. Brodsky put on the agreement, Judge Newman found that, with respect to extradition, Mr. Galanis was only granted use immunity.

The question that is before this Court is whether Mr. Martin's view of an agreement on a fact reached before this habeas corpus proceeding would affect the ultimate conclusion on the type of immunity granted Mr. Galanis.

The Court does ponder on what Judge Newman would have ruled if at the very start of the proceedings before him the government stated that it conceded that Mr. Galanis received transactional immunity, period.

In this Court's opinion, if Judge Newman had been faced with that stipulation of fact, the remaining issue before him would have been: Did the transactional immunity granted Mr. Galanis cover extradition proceedings. In other

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2 words, I assume his opinion would have, at least in this
3 section of his opinion, started out with saying, "The govern-
4 ment concedes that Mr. Galanis received transactional immunity.
5 The issue pending before this Court, therefore, is whether the
6 transactional immunity covers extradition proceedings," and he
7 would have gone on from there to decide the issue.

8 Now, if that were the stipulation before this
9 Court, it is my opinion that the stipulation should be brought
10 to Judge Newman's attention for whatever consideration he
11 might wish to give it.

12 However, the stipulation before this Court is
13 merely that the government concedes that Mr. Galanis received
14 transactional immunity from United States prosecutions and,
15 further, argues that, with respect to extradition, he received
16 only use immunity.

17 I see no purpose whatever in sending it back
18 to Judge Newman. Because all the government is doing is
19 stating before this Court what Judge Newman found as a fact
20 before him.

21 I do consider it significant that Mr. Martin's
22 view of the stiuplation does differ from the government's
23 view. I thought Mr. Martin at the start of the argument
24 stated the government now concedes that Mr. Galanis received
25 transactional immunity.

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2 MR. MARTIN: Well, that was my understanding.

3 THE COURT: Now, the government stood up and
4 said yes, it so agrees. However, a bit later the government
5 added a very significant phrase. It said, "We agree that Mr.
6 Galanis received transactional immunity from United States
7 prosecutions." Therefore implying that he did not receive
8 transactional immunity when it came to extradition, but only
9 use immunity.

10 MR. MARTIN: I think what's critical here, and
11 I think the best way to focus on it, is this. There was no
12 articulated statement at the time John Galanis was given
13 transactional immunity as to what -- he wasn't told, "You are
14 given transactional immunity except as to extradition." It
15 wasn't said, "You are given transactional immunity that covers
16 extradition." Nobody thought of it.

17 Brodsky's testimony -- again on page 12 -- says
18 he was given complete transactional immunity, this is a full
19 and complete package, and he was not to be subjected to any
20 other exposure, any other penalties or liabilities by any
21 aspects of the United States government for his co-operation
22 in this case. That's what happened. That's what I don't
23 think the government conceded before Judge Newman.

24 It is I think exactly as your Honor said. That
25 if that were the case, he should have said, "Look. That's

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2 what happened in '71 and '72." Then this extradition problem
3 arises and I have now got to decide how that impacts.
4

5 THE COURT: If the government is ready and
6 willing to make that concession -- but Mr. Sweigart here is
7 shaking his head "no."

8 MR. SWEIGART: Your Honor, I believe that the
9 record will reflect that my initial response this morning
10 was that he was granted transactional immunity as to United
11 States prosecution. That phrase was in right from the start.

12 THE COURT: Then my recollection is faulty
13 and I apologize to you.

14 MR. SWEIGART: The other factor is I think the
15 burden is kind of a little different than Mr. Martin's pre-
16 senting it. He's saying that if the government meant to ex-
17 cept extradition they should have done so right from the start.
18 I believe that if they meant to include extradition, it could
19 have done so, it would have happened right from the start
20 and it would have been memorialized, as Judge Newman found.
21 He said he found it somewhat -- I don't believe he used the
22 word "incredible," though. I can't recall his exact wording.
23 He found it a bit hard to believe that the United States
24 attorney would have granted the immunity from extradition
25 and not put that down, not memorialize that. And when he
did memorialize it, he only memorialized use immunity, and

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2 I think that is completely consistent with the government's
3 position.

4 THE COURT: Yes. But I interpret Judge Newman's
5 very comprehensive and detailed analysis directed to the ques-
6 tion as to the type of immunity granted, and my only reaction
7 to that is, if the government had conceded what type of im-
8 munity was granted, then the issue would be much narrower
9 before Judge Newman and it would only be framed along these
10 lines: Did the transactional immunity granted to Mr. Galanis
11 cover extradition proceedings? And he would not have had to
12 go through all the analyses that he did if the government
13 made that concession. However, the way you framed the con-
14 cession today it could be interpreted easily only to reflect
15 that you are agreeing with Judge Newman's analysis of what
16 was granted --

17 MR. MARTIN: That's correct.

18 MR. SWEIGART: That's correct, your Honor.

19 THE COURT: -- Mr. Galanis, at this
20 point you are saying, "We will put a classification to it.
21 We put the classification 'transactional immunity with respect
22 to United States prosecutions,' and with respect to extradition
23 we put the classification 'use immunity.'"

24 MR. SWEIGART: That's correct, your Honor.

25 THE COURT: If that is the stipulation, I don't

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2 see how anyone would benefit from asking Judge Newman to re-
3 consider his memorandum of opinion because the concession or
4 the stipulation of fact, merely stating it another way, what
5 he has already stated in his opinion and in his factual findings.

6 MR. MARTIN: Let me perhaps give a little back-
7 ground on how this whole discussion came about.

8 THE COURT: Yes.

9 MR. MARTIN: We had David Brodsky's testimony,
10 then we have Judge Newman's opinion, which I read, and I
11 think the Court has read, at least implicitly is saying that
12 Brodsky didn't understand "transactional" and "use immunity"
13 and he really only gave Galanis use immunity. That's all
14 Galanis only had.

15 THE COURT: Yes, to some extent there is some
16 indication that Mr. Brodsky classified the plea agreement as
17 "transactional," but defined it as use immunity.

18 MR. MARTIN: There is an implication in the
19 judge's opinion that he thought Brodsky didn't understand
20 what he was doing. When we got that opinion I went down and
21 met with the chief of the Criminal Division of the Southern
22 District of New York and I said, "Look, it is not right that
23 the Department of Justice should be going in, or you should
24 have a finding of the Court, even if it's not the Department
25 of Justice's representation, but it is not right in an --

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2 that an important legal issue should be decided on what this
3 office knows to be an erroneous factual basis. You know that
4 at the time John Galanis at the time he made a deal with this
5 office was told 'transactional immunity. That's what you're
6 getting. You're going to plead guilty to two counts, but
7 you've got transactional immunity.' That is the factual
8 record. You may want to argue from that transactional immunity
9 doesn't impact an extradition proceeding, but I think that,
10 you know, in this case justice really requires the Department
11 to take a consistent position with what -- you know, you can't
12 have the office in Connecticut saying something different
13 from what this office knows, and you know David Brodsky, and
14 you know that what he said is what happened."

15 And they agreed. It was on that basis that the
16 conversation started back and forth with Mr. Sweigart that led
17 us to where we are today.

18 As I really interpret what Mr. Sweigart is saying
19 is, I don't think he's disputing the basic fact that in 1971-
20 72 Brodsky knew what he was talking about, what he was giving
21 was transactional immunity. I think what he's disputing is
22 the legal conclusion that flows from that down the line.
23 What I think is important is the basic factual record.

24 THE COURT: Mr. Martin, if that is so and it
25 is to be viewed in that background, the issue before Judge

Newman would have been: Did the transactional immunity granted to Mr. Galanis cover extradition. I suppose the government would have the opportunity to say, "No, it didn't cover extradition proceedings," and you would argue that it did. If that were the case, then it would appear to me that a great deal of Judge Newman's opinion with respect to this issue would be superfluous, because he was trying to determine what type or classification of immunity was granted in 1971-72. So, obviously, he -- at least in my opinion -- he did not assume that the government was conceding transactional immunity at the time of the plea agreement. I gather that he interpreted the government's position that it had only granted use immunity at the time of the 1971-72 agreement.

So when you first started arguing today it appeared to me this was a significant change in the government's position, as you yourself did.

MR. MARTIN: Yes.

THE COURT: Because you went through all this bother to meet with the New York authorities and to be able to establish that fact before me and almost at the initial part of your argument stressing it. So you apparently think it's very significant. So do I. However, the government doesn't agree with you. It doesn't agree that you have obtained this very important concession from the United States

1 Attorney's office or the Department of Justice. Mr. Sweigart
2 is merely echoing what Judge Newman stated in his opinion.
3 That they will concede that he had immunity only to the ex-
4 tent of use immunity with respect to extradition, and that
5 is what Judge Newman found. So how does that help you, Mr.
6 Martin?
7

8 MR. MARTIN: Your Honor, I think you are
9 entitled to know at square one, is it the government's position
10 that in 1971-1972, prior to the plea John Galanis was told he
11 had transactional immunity, that's one. Two, is it the govern-
12 ment's position that as of that time up to the time he entered
13 his plea of guilty no one thought of the question of extra-
14 dition?

15 Those two facts are very critical, I think, to
16 your Honor's decision.

17 THE COURT: All right. So the question then
18 would be: If those two facts were so, the only question left
19 would be did the transactional immunity cover extradition
20 proceedings?

21 MR. MARTIN: True.

22 THE COURT: You would argue yes.

23 MR. MARTIN: Yes.

24 THE COURT: And the government would argue no.

25 MR. MARTIN: Then we get to -- I don't mean to

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2 cut off the fact that you then get to the second question of
3 how do you deal with Brodsky's representation that it did, et
4 cetera, et cetera.

5 THE COURT: All right. If you have this con-
6 cession with respect to these two facts from someone that can
7 bind the government in these proceedings other than anyone
8 that testified before Judge Newman, I should ask you who is
9 that person.

10 MR. MARTIN: I spoke to Elkin Abramowitz, chief
11 of the Criminal Division of the United States Attorney's office
12 for the Southern District of New York.

13 THE COURT: Is he willing to supply an affidavit
14 that --

15 MR. MARTIN: Your Honor, I think it's important
16 to note that Mr. Abramowitz was not with the United States
17 Attorney's office at the time of the agreement.

18 MR. SWEIGART: Nor was the present United States
19 Attorney, Robert Fisk. I have spoken with both of them. We
20 have spoken with the Department of Justice in Washington and
21 the position that I am representing this morning is consistent
22 with the position that they take and they are in agreement with
23 the position, that is, that Mr. Galanis was not granted trans-
24 actional immunity from extradition, he was granted only use
25 immunity as far as extradition goes, and that is the position

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2 that was conveyed to me as the position of the United States
3 Attorney's office for the Southern District of New York,
4 that is the position of Mr. Jack Lowe, who is an assistant
5 there now, who is the only assistant left there who had any
6 dealings with the Galanis file, and then we're faced with
7 the realities of Mr. Brodsky's testimony, and I believe that
8 the conclusion that Judge Newman reached was the correct one
9 and is consistent with the position of the government.

10 MR. MARTIN: Judge, on that, all I know is
11 that I was told by Mr. Abramowitz that they agreed that in
12 1971 Galanis was given transactional immunity. They said
13 they would not agree with our conclusion that that necessarily
14 has to follow through to extradition, but as to the factual
15 basis.

16 Now, it's my understanding also that Mr.
17 Sweigart has written a letter to Mr. Abramowitz saying that
18 the government was not taking the position in this proceeding
19 that Galanis was not given transactional immunity in 1971.
20 I haven't seen that letter. It was sent out yesterday. I
21 thought I was going to get a copy. I find out I am not.

22 MR. SWEIGART: That letter merely says, as I
23 said this morning, your Honor, that he was given transactional
24 immunity from United States prosecution, and the conclusion,
25 then, which we also follow. he was not given transactional

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2 immunity from extradition. And I think that's the important
3 distinction the government is making and that we continue to
4 make.

5 I think Judge Newman had before him Mr. Brodsky's
6 statement that he was given transactional immunity at the
7 time that -- at the time he didn't think of extradition, and --

8 THE COURT: Yes. But it is very, very significant,
9 though, that Mr. Brodsky's interpretation of the plea agreement
10 was not the position of the government before Judge Newman.
11 I just wonder if Mr. Brodsky's interpretation of the initial
12 plea agreement was conceded by the government to be a fact,
13 whether or not that might have influenced Judge Newman. In
14 other words, when Mr. Brodsky stated, "It was my opinion I
15 was giving him transactional immunity," and the government at
16 this hearing stood up and said to Judge Newman, "We concede,
17 and it is the government's position he was given transactional
18 immunity," at this point Judge Newman would have only had to
19 be concerned with the transactional immunity granted in 1971,
20 did it cover extradition in 1976 or '77.

21 MR. SWEIGART: Well, I think the only point that
22 we would have conceded then, and the only point we concede now,
23 that Mr. Galanis was given immunity from United States prosecu-
24 tion and that, in turn, I guess you can call that -- at this
25 point, was -- we're willing to call that informal transactional

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2 immunity.

3 THE COURT: You see, as I read Judge Newman's
4 opinion -- and I think it's a fair reading of it -- that Mr.
5 Brodsky at trial classified the immunity granted as "trans-
6 actional," but the government, before Judge Newman, was
7 classifying that immunity as "use immunity."

8 MR. SWEIGART: As far as extradition goes.

9 THE COURT: I'm not sure that that's crystal
10 clear in Judge Newman's opinion. You can almost read Judge
11 Newman's opinion to indicate that at the start of the pro-
12 ceedings it was his impression that the only issue before
13 him was whether the use immunity covered extradition, and
14 it was only after the hearings and in post-hearing briefs
15 that the defendant was claiming that the government gave him
16 transactional immunity, which covered extradition.

17 It just seems to me that if the government had
18 conceded that Mr. Galanis had received transactional immunity
19 Judge Newman would have stated that immediately in his opinion.

20 MR. SWEIGART: Well, I think the difficulty in
21 conceding that point is the difficulty we're facing this
22 morning, is then conceding the following step, that the issue
23 then is whether that transactional immunity grant covered --
24 I'm not sure that that is -- we're going originally into that
25 hearing with the question of use immunity, which we're willing

1 to concede he was granted use immunity. There is some ques-
2 tion in my mind as to whether the United States attorney
3 could even grant use immunity as to extradition. But accept-
4 ing as a fact that he did -- and he didn't do that at the
5 time of the plea, that's a later memoranda as far as the
6 continuing testimony and that it was later memorialized to
7 indicate that that testimony would not be used in an extra-
8 dition proceeding.

9 THE COURT: But can't you visualize, Mr.
10 Sweigart, how the opinion might have been written differently?
11 If the government had conceded there was transactional immunity
12 and the question then develops "did it cover extradition,"
13 I assume the opinion would have gone along the lines that,
14 "The government contends no, it did not cover extradition, it
15 could not have covered extradition as a matter of law, and
16 as a matter of intent it didn't cover extradition." The
17 defendant, on the other hand, would say as a matter of law
18 it does cover extradition, it was the intent to cover
19 extradition and it does cover extradition.

20 MR. SWEIGART: The problem is, your Honor, we
21 got into using these labels --

22 THE COURT: Yes.

23 MR. SWEIGART: -- at a later date. The labels
24 weren't used as part of the agreement.

25 THE COURT: Exactly. That is why I am saying

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2 if Judge Newman had been confronted with a stipulation that
3 started off by saying the government concedes there was trans-
4 actional immunity, but does not concede it covers extradition,
5 he would have immediately launched into that issue rather than
6 get involved in a very detailed and comprehensive analysis of
7 what type of immunity was granted in 1971, and then go on to
8 state that it did not cover extradition. Mr. Brodsky's testi-
9 mony with respect to classification was not accepted by Judge
10 Newman.

11 MR. SWEIGART: That's right.

12 THE COURT: But if the government stipulated
13 at the start of the trial --

14 MR. SWEIGART: The government did.

15 THE COURT: -- then there would not have been
16 the factual question when Mr. Brodsky got on the stand and
17 said, "Yes, we gave transactional immunity." Judge Newman
18 would have accepted that as a fact because the government
19 conceded it. But what happened at the hearing before Judge
20 Newman, the government took a contrary position to Mr. Brodsky.

21 I'm just interested, who called Mr. Brodsky
22 as a witness?

23 MR. MARTIN: We did, your Honor.

24 THE COURT: And the government cross-examined?

25 MR. MARTIN: Yes.

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2 THE COURT: So, obviously, Mr. Brodsky took a
3 differing view than the government before Judge Newman.
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5 MR. SWEIGART: That's correct. As far as
6 extradition.
7

8 THE COURT: As far as -- well, I'm not sure.
9

10 MR. MARTIN: It's back at square one, which I
11 think is the important one, and it's the reason we went to
12 the Southern District. Judge Newman's opinion, as I read it,
13 viewed the granting of transactional immunity, per se, as
14 something very strange and very unusual. We went back to
15 the Southern District, because I deal there all the time.
16 I served there. Mr. Abramowitz, with whom I dealt, is now
17 the chief of the division. He talked to Mr. Low who had --
18 Mr. Abramowitz was in the Southern District from '66 to '70.
19 Also, he knows. They know that during this entire period
20 up until today it is not unusual for the U. S. Attorney to
21 confer transactional immunity on a co-operating defendant.
22 There's an agreement reached. "This is what you plead to,
23 and as to everything else, you've got transactional immunity."
24

25 That's why I thought it was important to go back
to that office. Obviously, Mr. Sweigart wasn't with the
government at the time, has never served in that office. He
doesn't know what their practices are. I thought that Judge
Newman's opinion found that practice strange, and I thought

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2 that the government had an obligation to represent to the
3 Court, you know, that Brodsky's testimony is really what they
4 know the practice to be. And indeed, that they know Dave
5 Brodsky and they know he's not confused when he says, "I gave
6 this man transactional immunity." I think that's very im-
7 portant.

8 I thought the government's brief to your Honor
9 did not take the position that he had originally been given
10 transactional immunity, and I pointed that out to the Southern
11 District. I said, "Look, if Dave Brodsky was still an assis-
12 tant in this office, I don't think he would have written the
13 brief this way, and I don't think, knowing what you know about
14 Dave Brodsky, you would have written this brief this way. You
15 would have had to concede that, yes, he was given transactional
16 immunity. You can make your arguments that it doesn't flow
17 through, but you've got to concede that is a starting point."
18 And that's what they told me they did agree to.

19 THE COURT: But you cannot accept that?

20 MR. SWEIGART: Well, my basic understanding is,
21 again, we're coming back at a later date and putting a label.
22 Judge Newman found the type of immunity, and I think that
23 they agree, correctly, that he found he agreed with Mr.
24 Galanis. He agreed he co-operated. He would not be prosecuted
25 with the United States. Now, that, in effect, I believe, is

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2 transactional immunity. However, that is, he would not be
3 prosecuted by the United States.
4

5 I don't know. Perhaps this is just a semantic
6 argument. But the difficulty came because they didn't put
7 down "You are given transactional immunity."

8 THE COURT: Yes. As I view the government's
9 interpretation of the stipulation, the government is merely
10 stipulating to a classification found by Judge Newman: trans-
11 actional immunity with respect to prosecutions by the United
12 States; use immunity with respect to extradition.

13 MR. SWEIGART: That's correct.

14 THE COURT: That is, of course, no help to me.

15 MR. MARTIN: I think, probably -- I think --

16 THE COURT: All the government is saying is
17 that the government agrees with Judge Newman.

18 MR. MARTIN: But let's try and get get to --
19 the issue is, Mr. Sweigart says all the government said to
20 Galanis is, "You will plead to these and you won't be prosecuted
21 for anything else, and that's it." I think Brodsky's testi-
22 mony indicates, I think the Southern District would agree --
23 he was told he had transactional immunity. That's the way
24 you make the deal. I mean, they talk in terms of transactional
25 immunity. That is what I think Fact One is.

I don't see how you can -- let's assume for a

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2 minute you don't even go back to Judge Newman, I don't think
3 you can make any other determination on this record. And I
4 think that is your constitutional -- your duty in habeas, is
5 to -- in fact, I was looking up a case with the idea when
6 the facts are basically undisputed or there's mixed questions
7 of law and fact, the habeas court is not bound by prior de-
8 termination, and the first one I came up with, United States
9 versus Mancusi which you decided in the Second Circuit.

10 I think that on -- on this record Brodsky's
11 testimony is so clear, there is no confusion as to what
12 Galanis was given originally. I think where Judge Newman
13 found confusion was how that impacted on extradition. And
14 I think as I, you know, pointed out earlier, there, Brodsky
15 was talking about two different possibilities in extradition.
16 As he perceived it, the transactional immunity precluded the
17 Department of Justice from conducting the proceeding. It
18 did not preclude Canada from coming in with its own counsel
19 and, therefore -- but the use would still flow over because
20 the government couldn't provide information to Canada that
21 it would thereafter use as part of the extradition.

22 So I think that the original issue is a very
23 important one. I think it is the fact that he was given
24 transactional immunity, whatever consequences that might
25 have for not-anticipated extradition proceedings.

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3 THE COURT: I just disagree with Mr. Martin.
4 With that it's so crystal clear from the record. Judge Newman
5 states: "In explaining to this Court what he --" meaning
6 Brodsky "-- felt that protection was, Brodsky totally confused
7 use immunity, which clearly was granted, with transactional
8 immunity, which defendant now claims he received, even as to
9 extradition proceedings."

10 So, although Mr. Brodsky may have in your view
11 clearly indicated, and convinced Judge Newman, that he was --
12 that Galanis was given transactional immunity, Judge Newman
13 certainly did not so find.

14 MR. MARTIN: Well, I agree that he didn't so
15 find. I don't think, however --

16 THE COURT: And your position this morning is
17 that, based on the record, Judge Newman could have found as
18 he did. Because the record, at least, is ambiguous to a point.
19 But in fairness and in justice, if the government recognizes
20 that in the Southern District of New York at the time, trans-
21 actional immunity was the type of immunity that was commonly
22 granted, it should have so stated and come forward, even after
23 the opinion was written, and correct the record, so to speak.

24 MR. MARTIN: Let me say -- articulate my position,
25 if I can.

I agree, first, that the government -- that

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2 Judge Newman was led into error in finding only use immunity
3 by the position taken in the government -- by the government.
4 Two, I would say that, even without a concession by the govern-
5 ment this Court would have to find the existence of that error
6 because there is nothing in any of the record to contradict
7 Mr. Brodsky's testimony that the original grant was transactional
8 immunity, that is, the '71 and '72 grant. There are questions
9 that come up in '73, when he says to Galanis' attorney, "Look,
10 we are precluded from participating in this thing because of
11 the grant of transactional immunity." I think it's at that
12 point where Judge Newman might legitimately take issue as to
13 whether or not that was the legal conclusion and where the
14 questioning started. But I think that there is no basis in
15 this record to finding other than transactional immunity as
16 to the original deal. And that's in the memorandum. They
17 refer to the -- in Zane case -- where Brodsky sets forth in
18 three paragraphs -- it's referred to right in the opinion --
19 the second of those paragraphs. He said he was given informal
20 immunity on all subject matters. That's transactional immunity.
21 He wasn't given immunity as to the use of any evidence he
22 would have provided, he was given informal immunity on all
23 subject matters.

24 THE COURT: When you say "that's transactional
25 immunity," how do you define "transactional immunity?"

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3 MR. MARTIN: Transactional immunity is simply,
4 the difference being, once you've got immunity, transactional
5 immunity says that immunity applies to all subject matters
6 covered within it. All subject matters you disclose pursuant
7 to that grant. And we can find 800 bishops that we never
8 heard of before who would testify in any other type of pro-
9 ceeding as to your involvement in this activity, but we could
10 not proceed in those other proceedings because you have been
11 immunized with anything with regard to those transactions.
12 It says we will give those to you and we will not use it or
13 its fruits, but if we get independent evidence, then we'll
14 come in and prosecute you.

15 I think the recent difference in recent history
16 is whether John Dean was to be given use immunity by the
17 Senate. Special prosecutors went in and filed sealed evidence
18 with Judge Sirica. They wanted to show later on that at the
19 time Dean testified, they had the evidence. So there was no
20 use of that senate testimony. But had John Dean been given
21 transactional immunity by the Senate, despite the fact the
22 government had all that evidence, they simply could not proceed.

23 THE COURT: If the evidence were along those
24 lines, that Mr. Galanis received transactional immunity, and
25 that no one at the time even dreamed of extradition, it is
your claim that, as a matter of law, that would cover extradition

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2 proceedings?

3 MR. MARTIN: That's right.

4 THE COURT: Even though the government would
5 claim that it would only cover prosecution?

6 MR. MARTIN: That's right.

7 THE COURT: Is that the way the issue would have
8 been framed?

9 MR. MARTIN: That's correct. My view of that
10 would have been the same. Even though the government never
11 conceived that they might have come up with another witness
12 who would be able to give the same information, that's what
13 you do when you give transactional immunity. You take out
14 all those considerations and say "this is it. We're stepping
15 aside." And that was Brodsky's testimony.

16 Obviously, your Honor, we have had a lot of
17 argument. I think, at any time in this proceeding, just as
18 to the procedures, if you think on reflection it would be
19 helpful to remand the matter to Judge Newman, send it back
20 to him.

21 I think there are cases in the habeas corpus
22 field, innumerable cases, where just that is done.

23 THE COURT: Is time of the essence here at all?

24 MR. MARTIN: Your Honor, the defendant is on
25 bail, so it is really not. We have an extra copy of the

transcript which may be helpful to your Honor. That's just the transcript dealing with Mr. Brodsky's testimony. There was other transcript on the authentication, but -- which we can supply you also. That, we haven't got with us.

THE COURT: Before Judge Newman were there offers of proof through the vehicle of statements by counsel?

MR. MARTIN: No.

THE COURT: Prior to the first witness being called?

MR. MARTIN: I was not there the first day. I think very little, if anything.

MR. GRAND: What was the question?

MR. MARTIN: Any offers of proof to the Court or did you go right into the proceeding?

MR. GRAND: No, no.

MR. MARTIN: The hearing just commenced.

THE COURT: Does the government see that time is of the essence? I'm not talking of a delay of more than, say, two weeks to get the transcript of today's hearing. If it is, I will work on this without the transcript.

MR. SWEIGART: My initial concern was for the two-month period that's set forth by statute after the committing magistrate's order to then extradite or not. It's my understanding that the Supreme Court has ruled that that

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2 two-month period does not begin to run until the habeas is
3 decided, even if it goes all the way through to the Supreme
4 Court. So therefore, there would seem to be no time constraint
5 other than just the usual --

6 MR. MARTIN: That is what we have been told also
7 by the statement and if it is any help to the Court we will
8 obviously so stipulate.

9 THE COURT: All right. Could the parties share
10 in the cost of today's --

11 MR. MARTIN: Sure. We'll be happy to.

12 THE COURT: -- today's argument?

13 MR. MARTIN: Your Honor, I will even say with
14 commendable candor I have already ordered a copy. And, your
15 Honor, I would also make one further offer. If, after having
16 that time to review this transcript and study it, if you think
17 anything would be gained from further oral argument, we'd,
18 of course, be happy to come back.

19 THE COURT: Yes, I will keep that in mind. I
20 will reserve decision on the habeas corpus proceeding.

21 MR. MARTIN: Thank you.

22 THE COURT: Adjourn court.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN PETER GALANIS,

Petitioner-Appellant,

against

ERMEN PALLANICK, U.S. MARSHAL FOR THE
DISTRICT OF CONNECTICUT,

Respondent-Appellee.

State of New York,
County of New York,
City of New York—ss.:

IRVING LIGHTMAN being duly sworn, deposes
and says that he is over the age of 18 years. That on the 3rd
day of October, 1977, he served one copies of the
Joint Appendix on
Hon. Richard Blumenthal, U.S. Attorney for the
District of Connecticut

the attorney for the Respondent-Appellee
by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said attorney at
No. 270 Orange Street, New Haven, Conn. () N.Y.,
that being the address designated by him for that purpose upon
the preceding papers in this action.

Irving Lightman

Sworn to before me this

3rd day of October, 1977.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1978